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REVIEW OF GENERAL SERVICES ADMINISTRATION'S LEASE MANAGEMENT AT WATERSIDE MALL

(98-22)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT

OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

FIRST AND SECOND SESSIONS

AND THE

NINETY-EIGHTH CONGRESS

FIRST SESSION

SEPTEMBER 15, 16, 1981; DECEMBER 3, 1981; DECEMBER 14, 1982; MAY 24, 1983

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[1] Elected February 25, 1981.

[2] Elected December 16, 1981.

[3] Elected February 24, 1982.

[4] Resigned March 11, 1982.

[5] Designated ranking minority member of Subcommittee on Investigations and Oversight, July 22, 1982.

[6] Resigned as ranking minority member of Subcommittee on Investigations and Oversight, July 22, 1982; resigned from Subcommittee on Investigations and Oversight, July 27, 1982.

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REVIEW OF GENERAL SERVICES ADMINISTRATION'S LEASE MANAGEMENT AT WATERSIDE MALL

TUESDAY, SEPTEMBER 15, 1981

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:55 a.m., in room 2253, Rayburn House Office Building, Hon. Elliott H. Levitas (chairman of the subcommittee) presiding.

Mr. Levitas. The Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation will please come to order.

I would like to apologize to the witnesses and others for the delay. The subcommittee had a very important matter that had to be taken care of and because of the nature of the situation, it was unavoidable.

This morning the Subcommittee on Investigations and Oversight begins 2 days of hearings to learn why some 3,000 Federal employees of the Environmental Protection Agency located in the Waterside Mall in Southwest Washington, D.C., still do not have the cafeteria they were promised 10 years ago.

The original lease, negotiated by the General Services Administration in 1971, called for the building owner, the Town Center Management Corp., to provide a cafeteria for the EPA employees. But because of bureaucratic bungling or some higher level policy change, the cafeteria provision was never implemented. It is nothing short of disgraceful that a worthwhile and valuable public property right, the cafeteria, that was pledged in the original lease, has been lost through the action or inaction of GSA.

In 1980, at my request, the Inspector General issued a report on this matter. The report stated that the lines of authority in the GSA were confused during the crucial period from 1971 to 1974, when GSA was going through a series of organizational and personnel changes. In the confusion, apparently, no one in the GSA pushed aggressively for full compliance with this provision of the lease, with the exception of one contracting officer. As a result, the cafeteria was lost by what the GSA's own Board of Contract Appeals, in a 1980 opinion on this issue, called a "de facto" default.

Nevertheless, the series of events which have transpired in respect to GSA's resistance to enforcing this lease provision have troubled me considerably. When a lease provision is permitted to be disregarded, and a lessor permitted to substitute something less than desirable, some accountability must be established. The Congress needs to know why the General Services Administration abrogated its responsibility in enforcing the cafeteria lease provision of this contract, and it is for that purpose that we have asked our witnesses to appear.

This whole issue has been variously described over a number of years in the press and elsewhere as "the case of the missing cafeteria." In my judgment, we now are at the point of describing that this is a "whodunit." Who did it; who was responsible for the Government losing a valuable property right for which it bargained in good faith?

Frequently, in matters of this sort around Washington, it has generally been the case that people shrug their shoulders and say, well, it's just another foul-up. Something else has slipped between the cracks. But it seems to me that in our responsibilities as stewards of the public trust and the public funds, that we have got to get to the bottom of this as an example of how things of this sort happen, and I, for one, am not prepared simply to close my eyes and shrug my shoulders and say, well, it's just another bureaucratic screwup.

We need to find out "whodunit," and why they did it. This is a subcommittee on investigations and oversight. These 2 days of hearings in my opinion will clearly demonstrate both of these functions of this subcommittee.

We are going to investigate and find out precisely, to the extent we can, what has occurred and who is responsible, and in that process exercise our oversight responsibilities to make certain that problems of this sort do not occur again in the future, and that a handle can be gotten on this type of management of public responsibility. It is for that reason, quite beyond the question of this particular missing cafeteria in this particular foul-up, that I think these hearings have rather long-range and broad significance.

Before calling on the first panel, I would like to recognize the distinguished ranking member, the gentleman from Minnesota, my good friend and colleague, Mr. Stangeland.

Mr. **STANGELAND**. Let me say I am in full agreement with your remarks concerning the Waterside Mall lease and the missing cafeteria.

It is especially frustrating to have had the GSA Board of Contract Appeals conclusively determine that GSA did have a contractual right to the cafeteria under the lease agreement, but also determine that the agency lost that right through its own inaction.

We are already dealing with a rental budget to house Federal employees that is expected to cost the American taxpayers about $729 million for fiscal year 1982, and that is estimated to reach the $1 billion mark by fiscal year 1985 and the $2 billion mark by 1990. What we do not need—now or in the future—are more situations such as this one that add to those costs.

Looking at this in a larger context, I am sure we are all concerned that this particular problem with the Waterside Mall lease may not be an isolated case but may, in fact, be but a symptom of some larger problems with GSA's leasing practices and procedures.

I look forward to hearing the testimony of the witnesses in order to take a good, thorough look at how GSA handled the Waterside Mall lease and how the cafeteria was lost.

Perhaps in hindsight we can gain some understanding that will help to avoid similar problems in the future.

Mr. LEVITAS. Thank you very much for an excellent statement, Mr. Stangeland.

Does any other member of the subcommittee care to make an opening statement at this time?

If not, let me ask the first panel of witnesses to come to the witness table. It will consist of the Inspector General representatives of GSA, Mr. Dennis Trietsch, Mr Alvin Coleman, Mr. Lynn Florence, and also I would suggest we have the GAO witnesses at the same time, because we will be talking about generally the same subject matter, and rather than having the members duplicate their questions it would be helpful to have you up here, Mr. James G. Mitchell, the Associate Director of the Procurement, Logistics, and Readiness Division; Mr. Robert H. Hunter, Jr., Assistant General Counsel, General Accounting Office.

Thank you, gentlemen. May I ask each of you to raise your right hands. Do you solemnly swear the testimony you will give before the subcommittee today will be the truth, the whole truth and nothing but the truth so help you God?

[Chorus of "I do."]

TESTIMONY OF DENNIS R. TRIETSCH, ATTORNEY, OFFICE OF SPECIAL PROJECTS, ALVIN A. COLEMAN, SPECIAL AGENT IN CHARGE, AND LYNN A. FLORENCE, JR., SPECIAL AGENT, GENERAL SERVICES ADMINISTRATION, OFFICE OF INSPECTOR GENERAL; JAMES G. MITCHELL, ASSOCIATE DIRECTOR, PROCUREMENT, LOGISTICS, AND READINESS DIVISION; AND MR. ROBERT H. HUNTER, JR., ASSISTANT GENERAL COUNSEL, GENERAL ACCOUNTING OFFICE

Mr. LEVITAS. Mr. Trietsch, please begin with the statement that you have to put this matter in context. As I noted in my opening statement, I asked the Inspector General, I guess it was almost 2 years ago now, to take a look at this situation, because it had been brewing for a long time. I will say that although I did request it, I was informed that the Inspector General was already aware of the matter and was really beginning to look into it on his own initiative. Mr. Trietsch.

Mr. TRIETSCH. Mr. Chairman and members of the subcommittee, I am pleased to present testimony today on the findings presented in the July 16, 1980, Inspector General report prepared at your request. This report involves the Waterside Mall lease requirement for a cafeteria, and its subsequent waiver by the Government.

This report considered only the question of responsibility for the Government's waiver of a cafeteria in the Waterside Mall complex.

The GSA Board of Contract Appeals rendered a decision on March 31, 1980, which held that the Government had waived its right to a cafeteria as provided for by the lease.

The Inspector General report, which I prepared, explored the major deficiencies, actions, and inactions which led to the waiver of the cafeteria. The role and conduct of GSA officials, Environmental Protection Agency officials, and the lessor were considered.

The Government's waiver of the cafeteria provision in the Wateside Mall lease was the result of several interrelated factors.

When basic operational decisions for the administration of this lease within GSA were assumed at the level of the Assistant Commissioner for Operating Programs of the Public Buildings Service, the contracting officer and project coordinator lost the necessary clout to effectively deal with the lessor.

Mr. **Levitas**. Let me interrupt you right there, please. If you would go back to the beginning of that last sentence and repeat it, and if you have available the names of the individuals involved, because there were changing casts of characters throughout, in order for us to keep our eye on who we are talking about, it would be helpful if you could identify these people.

Mr. **Trietsch**. I will be happy to, Mr. Chairman. I think, first of all, that that is one of the problems. There was such a changing cast of characters, and I think it is important that you point that out. Basic operational decisions for the administration of this lease were assumed at the level of the Assistant Commissioner for Operating Programs. The first Assistant Commissioner for Operating Programs of the Public Buildings Service at GSA was Mr. Larry Roush.

I think at this point I should also mention that the two subsequent Assistant Commissioners for Operating Programs were Mr. Ronald Zechman and Mr. H. Douglas Harvell.

Thus the contracting officer and project coordinator as a result, lost the necessary clout——

Mr. **Molinari**. Excuse me, Mr. Chairman. Might I interrupt?

Mr. **Levitas**. Sure.

Mr. **Molinari**. Would you mind giving us the dates of their tenure.

Mr. **Trietsch**. As best as I could determine when I prepared the report, by looking at existing GSA documents, the tenure officially on Mr. Roush was from February 1971 until June or July 1972. Although there is indication in the record that Mr. Roush assumed the role of Assistant Commissioner for Operating Programs in September 1970, it appears that officially he became Assistant Commissioner in February 1971. There is some ambiguity there.

Mr. Zechman assumed the position of Assistant Commissioner for Operating Programs in either July or August 1972, and continued in that role until November 1973. Mr. Harvell assumed the role of Assistant Commissioner in November 1973, and remained in that position until either February or March 1975. These three individuals, as best we could determine, were the three Assistant Commissioners for Operating Programs who were in authority during the crucial period of time.

Mr. **Levitas**. One other question at this point. You referred to the assumption of responsibility by the Assistant Commissioner, and you speak of the role of the contracting officer. Who was the contracting officer?

Mr. **Trietsch**. The contracting officer at that time—and I will elaborate on that later, Mr. Chairman—was Mr. Arthur Barton, and the project coordinator, which I will also mention here, was Mr. Bernard Adamec.

Let me give you the dates of their service. It appears that Mr. Adamec was the project coordinator, and again, because of the time that has passed, the records were not exactly complete, but it appears that Mr. Adamec was project coordinator from March or April 1971 through January or February 1973. Mr. Barton, was contracting officer from May 1971 through August or September 1972.

Now, prior to this, a contracting officer by the name of Mr. Wayne Roy was involved from February 1971 through May 1971, but it appears that Mr. Barton played the primary role as contracting officer during the crucial period. While I am indicating the names, I might as well mention that there were two other contracting officers that I was able to determine who had some role in the Waterside Mall lease. They are Mr. James McMahon and Mr. Earl Eschbacher.

Mr. McMahon served from August or September 1972 as the contracting officer through June 1974; and Mr. Eschbacher from approximately July 1974 through either 1975 or 1976.

The records I was able to locate were not clear on the precise dates, so all dates of service listed are approximate.

Let me read the paragraph again, if I may, from the text.

When basic operational decisions for the administration of this lease were assumed at the level of the Assistant Commissioner for Operating Programs, and that was Mr. Roush at the time, the contracting officer and project coordinator lost the necessary clout to effectively deal with the lessor.

Internal conflicts and confusion among the various Public Buildings Service officials who were technically responsible for administering this lease occurred in part as a result of the shift in approach taken by the first Assistant Commissioner for Operating Programs.

Lines of authority became obscure, and the role to be played by each Public Buildings Service component involved with the lease lost clarity. And, for a critical period of time, the Government's position taken in early 1972 by the contracting officer, designed to force a resolution of the cafeteria issue, shifted and then languished in uncertainty. The de facto waiver of the cafeteria requirement, as determined by the GSA Board of Contract Appeals, occurred before the Government next attempted to take a strong stand on the lease provision. This was some 3 or 3½ years later.

The lack of consistency by GSA was also in part influenced by the push by EPA officials to get EPA employees into the newly constructed office space at Waterside Mall, and by the lessor's approach of providing other food facilities in the Mall to service EPA employees occupying the space.

This, Mr. Chairman, concludes my prepared statement, I am prepared to answer any questions that I can about my July 1980 report.

Mr. LEVITAS. Thank you very much, Mr. Trietsch. Now why don't we hear from GAO before we go to general questions.

Mr. MITCHELL. Mr. Chairman, I have a prepared statement. It is about 10½ pages. I can brief it or read the 10½ pages.

Mr. LEVITAS. I would prefer that you summarize it. Your full statement, of course, will be made a part of the record.

Mr. MITCHELL. I will summarize it and be sure I include our recommendations that we had in our report.

[Mr. Mitchell's prepared statement follows:]

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
SEPTEMBER 15, 1981

STATEMENT OF

JAMES G. MITCHELL

ASSOCIATE DIRECTOR

FACILITIES ACQUISITION AND MANAGEMENT SUBDIVISION

PROCUREMENT, LOGISTICS AND READINESS DIVISION

BEFORE THE

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

HOUSE OF REPRESENTATIVES

ON THE

GENERAL SERVICES ADMINISTRATION'S

LEASE OF BUILDING SPACE

IN THE

WATERSIDE MALL BUILDING COMPLEX

WASHINGTON, D.C.

Mr. Chairman and members of the Subcommittee:

We are pleased to appear before you to discuss our September 20, 1977, report on the General Services Administration's actions to acquire a cafeteria as part of its acquisition of leased office and storage space for Environmental Protection Agency employees at the Waterside Mall building complex in Southwest Washington, D.C. We made our review in the late 1976-1977 timeframe at the request of Representative Charlie Rose. Congressman Rose was concerned with the lessor's (Town Center Management Corporation) noncompliance with the 1971 lease requirements to provide a cafeteria. He believed a monetary recovery was in order and that a full-service cafeteria should be installed within a reasonable time to serve Federal employees' needs at the Waterside Mall complex.

BACKGROUND

In February 1971, GSA leased, from the Town Center Management Corporation, 466,000 square feet of space, with an option to lease an additional 60,000 square feet, at the Waterside Mall building complex. GSA's solicitation of offers, which became part of the lease, stated that, "A complete cafeteria facility shall be furnished by the lessor at his expense with capacity large enough to serve food to the Federal employees who will work in the leased space * * * All space occupied by the cafeteria shall be excluded from the area covered by the lease and the Lessor shall assume full control of such space without cost to the Government for rental, utilities, or other charges." Furthermore, the soliciation stated, "The Government shall have the right to install and have operated by others whom it may designate, food service facilities, or vending stands and/or vending machines, within the confines of the space leased, if any such installations are deemed by the Government to be necessary * * *."

In a February 12 amendment to its offer, Town Center stated that, "A cafeteria or cafeterias shall be provided in accordance with * * * the offer. Said cafeteria shall be operational concurrent with or prior to occupancy of the general office space by lessee."

In its February 19 acceptance letter to Town Center, GSA stated, "A cafeteria will be placed in operation on a phased basis, concurrently with the delivery of the Waterside Mall West office space. This cafeteria operation will be expanded as additional space is delivered so as to provide adequate food service for the number of personnel occupying the space. The level of service which will be considered adequate shall be determined by consultation between the Government and the lessor." Town Center acknowledged this condition in their February 23, 1971, acceptance of the GSA letter.

EARLY YEARS OF THE LEASE--1971 AND 1972

On July 12, 1971, Town Center notified GSA that it had completed negotiations with a private firm to provide, outfit, and operate an automatic cafeteria on the first floor of the Mall and the cafeteria was to open concurrent with occupancy. Occupancy began in August 1971 and by January 1972, 600 EPA employees were at the complex with 800 more to be assigned through March 1972.

In January 1972 EPA told GSA that the lessor had said that food facilities would not be available until April or May 1972. On February 4, 1972, GSA's contracting officer notified Town Center that he was concerned about the inadequate eating facilities at the Mall complex. Again on February 28, 1972, the contracting officer wrote to Town Center and reminded the lessor of the cafeteria requirement in the lease and advised the lessor that until such time as tangible evidence of adherence to the lease requirement is provided, all future rental payments will be held in abeyance effective March 31, 1972.

On March 2, 1972, the president of Town Center responded to the contracting officer's February 28 letter by stating that the Government had the right to install food service, or vending, facilities within the confines of the leased space. He further stated that in consultation with GSA it had been agreed that no effort would be made to provide a cafeteria-type facility within the Mall complex but if private food service operators did not choose to locate within the mall, Town Center would provide GSA space for a food facility.

Further, according to the lessor, GSA said that if the private facilities could serve EPA's needs, a Government-operated facility would not be necessary. While the lessor acknowledged that GSA had the right to insist on a Government food facility, the lessor stated that the enforcement of such a requirement would be a breach of faith with the business community and the tenants in Waterside Mall who had executed leases assuming there would be no Government facility.

On March 10, 1972, GSA's Acting Assistant Commissioner for Buildings Management stated in a memorandum to the Assistant Commissioner for Operating Programs that the lessor had stated in a meeting with GSA officials that he had eliminated the cafeteria from further consideration when negotiations with a prospective concessionaire broke down and attempts to interest another food service firm failed. The lessor also said that he had obtained GSA's approval to eliminate the cafeteria because the other food facilities' services would be more than adequate to satisfy lease requirements.

On April 19, 1972, the Assistant Commissioner for Operating Programs told the lessor that the Government would not pursue the actions discussed in the contracting officer's February 28 letter, i.e., the withholding of rental payments, until all cafeteria requirement studies were completed.

On June 20, 1972, GSA's Project Coordinator, Special Projects Division, stated that following an agreement between GSA's Assistant Commissioner for Operating Programs, the lessor, and EPA, GSA would give the lessor until September 1 to provide three restaurants before taking action.

On July 31 an EPA official wrote GSA about the totally inadequate eating facilities at the mall. He noted that at a July 25 meeting of EPA and GSA officials, and the lessor, it had become apparent that the September 1 opening date for three eating facilities could not be met. The EPA official asked GSA to implement the lease requirements for a cafeteria. GSA replied that its General Counsel was investigating what legal course was available, that firm recommendations would be available shortly, and that a course of action would then be taken.

After studying the cafeteria situation, GSA's legal staff reported in August 1972 that (1) the lease required the lessor to furnish a cafeteria-type facility and (2) GSA could refuse to accept and occupy any more finished space until the cafeteria was constructed and operational. The Acting Commissioner, Public Buildings Service, recommended that GSA defer to the requirements and needs of EPA and continue to increase occupancy regardless of the cafeteria issue.

It was recommended that GSA:

- --Notify the lessor, by letter from the contracting officer, that the available and proposed eating facilities did not meet the lease contract requirements.
- --Direct the lessor to furnish a cafeteria, in accordance with the lease, in the shortest time possible and to install interim facilities immediately.
- --Advise the lessor that failure to respond positively would result in the Government taking action, including withholding rental payments, to protect its interest.

On September 6, 1972, the Project Coordinator, Special Projects Division, noted that the lessor still had not provided GSA with support for his claim that the cafeteria requirement had been waived. The contracting officer was to have informed the lessor by letter of GSA's final decision and its course of action as listed above. This notification, however, was apparently never mailed to the lessor; we could not determine why.

INACTIVITY--SEPTEMBER 1972 TO AUGUST 1975

GSA's project files contained no further correspondence, either internal or external, pertaining to the cafeteria requirement from September 6, 1972, to August 1, 1975, when a Federal Times reporter questioned the entire Waterside Mall lease situation. The only GSA action concerning food facilities during this period occurred when GSA made followup surveys of restaurant facilities and acted on EPA's request for a blind-operated concession.

During that 3-year period, EPA began to occupy space on the second floor mall area. A 1971 floor plan of the mall, qualified by the statement that locations and categories of spaces were subject to change, showed a cafeteria location at the south end of the second floor of the Mall West. GSA records of a June 18, 1971, meeting state that the lessor assured GSA and EPA officials that a cafeteria would be provided and located in that area. We believe that space is the area originally designated for the cafeteria. Apparently, GSA leased, through supplemental agreements, and EPA occupied, the space initially intended for the cafeteria.

LATER EVENTS--AUGUST 1975 TO SEPTEMBER 1977

On August 19, 1975, GSA's Region III Administrator provided the Federal Times reporter with information requested under the provisions of the Freedom of Information Act. The Regional Administrator told the reporter that the cafeteria requirement had been orally deleted since the lessor had met GSA's food facility requirements in the mall. We could find no evidence in support of that statement.

In a January 6, 1976, meeting with the lessor, GSA again stated its position that the lessor had not satisfied the lease requirements for a cafeteria. The lessor stated, among other things, that he would not consent to installing a single large cafeteria and that there was no available space for a cafeteria at the mall.

After more correspondence between GSA and the lessor, the contracting officer, on March 17, 1976, rendered a decision that the lessor was not in compliance with the lease agreement and directed the lessor either give GSA a schedule of construction and occupancy dates or appeal the decision. The lessor appealed the decision to the Board of Contract Appeals. The lessor claimed that:

--GSA had orally deleted the cafeteria requirement.

--The lease solicitation stated only that the Government had the right to install a food service or vending area, and a new page to the solicitation was submitted by GSA during negotiating sessions.

--The offer amendment submitted to GSA on February 12, 1971, regarding cafeterias was intended to mean private food facilities.

--Correspondence and meetings between the lessor and GSA officials from April 1972 through September 1972 about the sufficiency of private food facilities ended with the lessor being told that the facilities were sufficient to service the agency's needs and met all the lease requirements.

While the lessor's appeal was before the Board, additional correspondence and meetings occurred between the lessor and GSA. In a June 9, 1976, meeting the lessor presented a space and equipment layout for a food facility and indicated that the operator would be the proprietor of the existing Greek Subway restaurant at the mall. After some further correspondence on the proposed facility, the lessor, on August 16, 1976, gave GSA and EPA authorization to discuss the proposed facility directly with the operator of the Greek Subway restaurant. On that same date the Board of Contract Appeals acted on a GSA motion to dismiss the lessor's appeal of the contracting officer's March 17, 1976, decision. The appeal was dismissed without prejudice to the right of either party to have the appeal reinstated upon written request.

On September 2, 1976, the contracting officer wrote to the lessor indicating that the proposed facility would meet the lease requirements but only while the facility was in operation. However, disagreement then arose between the lessor and GSA as to who must pay for the installation of the proposed facility. The lessor felt that GSA must pay and GSA felt that no funds could or would be allocated for the cafeteria because the lease specified that the lessor was to assume full control of the space without cost to the Government. At the time we completed our audit in May 1977, GSA and the lessor were corresponding on the sizing of the proposed facility and the schedule for completing the facility.

REPORT CONCLUSIONS AND RECOMMENDATIONS

Although GSA was negotiating with the lessor to have the lessor install a cafeteria, we felt the matter was not being properly resolved and EPA employees would not have a cafeteria available for some time.

We recommended that the Administrator of General Services establish a firm opening date for the operation of a lessor-installed cafeteria in non-Government leased space. If that date was not met, we recommended that the Administrator have a cafeteria established in Government-leased space.

In view of its position that the lease terms require lessor installation of a cafeteria, we also recommended that General Services proceed to withhold rent for damages pending resolution of the Board of Contract Appeals case. The amount of damages should be determined from the time the cafeteria was required until the effective opening date of an acceptable cafeteria. If General Services had to establish a cafeteria in Government-leased space, we recommended that its withheld rent also cover the rental value of the space used for the cafeteria and all installation costs.

In response to our recommendations, GSA said it believed our report was somewhat optimistic about GSA's legal rights to obtain a cafeteria and damages, but it was reinstating the matter before the Board of Contract Appeals.

SUBSEQUENT EVENTS

The Board of Contract Appeals held hearings on the cafeteria situation during July 1978. The hearings involved the issue of whether the lease required a cafeteria and, if it did, whether the Government waived, or the lessor satisfied, the requirement. Further, if the requirement existed and was not waived or satisfied, the Board was to decide which party bore the risk of any costs not borne by others for installing the cafeteria.

On March 20, 1980, the Board ruled that the lease required a cafeteria but that the lessor was discharged from its obligation to install a cafeteria through governmental conduct. The Board noted that the Government never withheld rent or refused to take occupancy of any space after being informed by the lessor that it would not install a cafeteria. Further, the Government took positive steps indicating it did not intend to require the installation of a cafeteria by leasing the space at the location where the lessor had informed the Government it would have a cafeteria. The Board concluded that the Government's continuing to take occupancy, never withholding rent, and occupying substantial portions of the space where the lessor planned to locate the cafeteria constituted a

Government representation with knowledge that the lease provision requiring a cafeteria would not be enforced. The lessor relied on this Government representation by leasing portions of the space planned for the cafeteria to the Government and by furnishing alternative food facilities.

SUMMARY COMMENTS

GSA was not aggressive in enforcing the 1971 lease provision and EPA employees wound up without adequate food facilities.

GSA told us that the cafeteria requirement was not enforced due to inadvertence rather than a conscious decision not to enforce the lease, and that contributing factors were the number of officials involved in the problem and the high turnover rate among officials.

We found no evidence of a conscious decision not to resolve the cafeteria issue but we could not determine why the issue was not resolved early during the lease period. While there was a high turnover of GSA officials (e.g. three contracting officers during the first three years of the lease) there was a continuity of officials at management levels who should have been familiar with the lease terms.

During early 1976 and again during the latter part of 1976 and early 1977 (the same timeframe we were performing our review) GSA's Office of Investigations looked into the cafeteria situation. The investigators interviewed the GSA officials, some of whom were no longer employed by GSA, directly involved and found that no one had any factual knowledge of any waivers, decision to accept private facilities in lieu of a cafeteria, or instructions not to pursue the provisions of the lease. In summary, the officials interviewed by the investigators stated they had no factual knowledge of any criminal wrongdoing or contract irregularities.

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Mr. Chairman, this concludes my prepared statement. My associates and I will be happy to respond to any questions you or other members of the Subcommittee have at this time.

Mr. Mitchell. Our 1977 report was prepared at the request of Congressman Charlie Rose. We performed our job starting in late 1976 and through the summer of 1977 and our report was issued September 20, 1977. I want to briefly recap what we have in our report. We traced the history of the acquisition of the cafeteria. We found that in February 1971, GSA leased over 500,000 square feet of space at Waterside Mall from the Town Center Management Corp. The lease required a complete cafeteria to be furnished by the lessor at his expense.

In early 1972, about a year after the lease, GSA still did not have any action on the cafeteria, so they advised the lessor that rental payments would be withheld starting in March 31, 1972, unless the lessor provided evidence of meeting the lease requirement.

In March 1972, the lessor replied that it had been agreed with GSA that no effort would be made to provide a cafeteria-type facility at the Mall.

In April 1972, the Assistant Commissioner for Operating Programs—and this was Mr. Roush—told the lessor GSA would not withhold rent until cafeteria requirements had been restudied and these studies were completed. The lease project files from 1972 until August 1975 contain almost no correspondence on what happened during that timeframe.

In 1975, a Federal Times reporter raised the question of the lease of a cafeteria; at that time GSA again started requesting the lessor to meet the lease requirements.

Considerable correspondence took place on the differences of opinion on whether there was a lease requirement.

In March 1976, the contracting officer decided the lessor was not complying with the lease, and directed the lessor to either give GSA a schedule of construction and occupancy or appeal his decision. The contracting officer at that time was Mr. Eschbacher.

The lessor appealed the decision of the contracting officer, but the appeal was later dismissed. The lessor then proposed a facility that would apparently have met the lease requirements. However, disagreement arose over who must pay for the installation of the facility. This was about the time that we completed our audit in May 1977. Correspondence was still going back and forth between the lessor and GSA as to who would actually pay for the facility and what size it would be.

We issued our report in September of 1977 and we made several recommendations. We recommended that a firm opening date be established by GSA for the operation of the lessor-installed cafeteria. If the date wasn't met, we recommended that GSA have a cafeteria established in Government-leased space. We also recommended that GSA withhold rent for damages determined from the time that the cafeteria was required until the opening of an acceptable cafeteria, and if GSA had to establish a cafeteria instead of the lessor we recommended GSA withhold rent to also cover the cost of rent and installation of the cafeteria by GSA.

GSA told us, in responding to our report, that we were somewhat optimistic about GSA's legal rights and said it was reinstating the matter before the Board of Contract Appeals. The Board held hearings on the cafeteria in July 1978, and on March 31, 1980, ruled that the lease required a cafeteria but the lessor was discharged from his obligation through governmental conduct.

In summary, we believe GSA was not aggressive in enforcing the 1971 lease. GSA told us it was not enforced at the time we did our work due to inadvertence rather than a conscious decision not to enforce the lease.

In the files, we found no conscious decision not to enforce the lease, but we could not determine the real reason from the files why it was not enforced. Mr. Chairman, that is, in brief, my prepared statement.

Mr. LEVITAS. Thank you very much. Before I get into specific questions, Mr. Mitchell, I wanted to clarify something because your testimony sort of calls out for me to do so. You raise the question, it seems to me, as to whether it was inadvertence or negligence or a conscious policy decision not to enforce the lease requirement. Am I correct in reading that into what you are saying?

Mr. MITCHELL. No. Actually what we did, Mr. Chairman, we wrote to GSA. We tried to find out why it wasn't enforced because we could not find any records at about the time it should have been enforced from the 1972 to 1975 timeframe. We wrote GSA for its reason why it wasn't enforced, and they responded that it was due to inadvertence. We are just simply repeating their words that it was due to inadvertence. We simply could not find any case where there was a conscious decision not to enforce it.

Mr. LEVITAS. In your testimony you say that the regional administrator in 1975 told a reporter for the Federal Times that the cafeteria requirement had been orally deleted?

Mr. MITCHELL. Yes, sir.

Mr. LEVITAS. Were you able to check that out?

Mr. MITCHELL. GSA corrected that statement later to the same reporter. It had not been orally deleted. Again they said they made a mistake there. It had not been orally deleted.

Mr. LEVITAS. Were you able to make any judgment based on your investigation as to whether the failure to enforce the provision of the lease was a result of negligence, inadvertence or a conscious management decision?

Mr. MITCHELL. No, sir, we could not determine that it was due to any of those things. I would like to point out, Mr. Chairman, at the same time we were looking at this, GSA's Office of Investigations, which preceded the current arrangement, was also looking at it. We were in there at the same time.

They were actually taking sworn statements from people who were still there and associated with the project, and some of those who had left GSA who were associated with the project, thus, we had access to GSA Office of Investigations people that were making their investigation, and they told us they hadn't disclosed any criminal action in this case.

Mr. LEVITAS. As I recall, the report said that as a result of the passage of time and the lack of corroborative information, they were not in a position to make that determination?

Mr. MITCHELL. GSA's Office of Investigation?

Mr. LEVITAS. Yes.

Mr. MITCHELL. I am sorry, I don't remember that particular statement in there. I am not sure whether they actually said that.

Mr. LEVITAS. Mr. Trietsch, perhaps it might be helpful, since your IG report of July 1980 was not the only investigation, if you could briefly tell the subcommittee what were the other reports that related to this, and when they occurred.

Mr. TRIETSCH. Yes. There were two other reports, Mr. Chairman. The first is a report of investigation prepared by our Office of Investigations, which as the gentleman from GAO just noted, was a forerunner of the Office of Inspector General. The Office of Investigations is now part of the Office of Inspector General at GSA. This report was prepared in 1976. The investigation took place in late 1975 through early to mid-1976. The title of the report was simply, "Alleged Irregularities in the Region III Lease Cafeteria." Now, the focus of this report was principally the cafeteria issue. There was a subsequent report of investigation, which Mr. Florence prepared as the agent, which is dated November 1980. The focus of this report of investigation concerns primarily utilities in the lease. These are the two reports of investigation prepared by the Office, either the Office of Investigations or the subsequent Office of Inspector General.

Mr. LEVITAS. What were the conclusions of those two reports?

Mr. TRIETSCH. The first report, which is the 1976 report of investigation, is a very lengthy report. It involved several interviews conducted by the case agent, Mr. Lee Johnson, who has since retired from GSA. He interviewed most, if not all, of the principal GSA, as well as EPA officials involved in the negotiation and administration of the lease. The conclusion is essentially that there was no available evidence that would indicate precisely why the cafeteria didn't exist, but, as my report indicated in 1980, it would appear that as a result of conflicts, confusion, and misadministration, the cafeteria provision in the lease was simply not implemented. That is also basically the conclusion of the 1976 report of investigation.

The 1980 report of investigation and I think Mr. Florence can talk to this more precisely since he was the agent involved in that investigation—focuses really on a different question, and I will defer to him on that.

Mr. LEVITAS. Mr. Florence.

Mr. FLORENCE. Yes, sir, I would like to read the prepared statement that I have made. The investigation was assigned to me on December 7, 1978. It concerns GSA Lease Contract No. GS-03B-5788 for 526,800 square feet of space at the Waterside Office Towers, East and West, 401 M Street, Southwest, Washington, D.C.

The investigation was predicated upon an inspection report dated October 31, 1978, prepared by the Office of Inspections, GSA. This report indicates there may have been irregularities in the negotiation of the aforementioned lease.

The central focus of allegations in this case is whether or not Town Center had a binding agreement with GSA on February 19 or 23, 1971. The date that representatives of GSA and Town Center signed the agreement was in dispute. The GSA does not have the original or a copy of the first agreement signed during that timeframe. The importance of the dates of the agreement lies in the fact that it is believed that the first agreement was more favorable to GSA than the second. The second agreement is the one that stands today.

During the negotiations of this lease there were extensive reorganizations within management and leasing personnel within GSA, which resulted in changes in titles and functions of personnel involved in the actual negotiations. In essence this investigation has been predicated upon information which includes hearsay, inferences and unsubstantiated allegations. In an investigation begun in such a manner it would be incumbent upon an investigator to ask persons who may or may not have been involved in the negotiations, whether they recall if a letter of agreement signed 8 years ago was signed on February 19 or 23, 1971. It would also be required to check their statements against a document that no longer exists. It was concluded that the collection of this sort of evidence would at the very least be nonproductive.

Moreover, in addition to the foregoing, it was found that there was no probable cause to believe that a crime or criminal intent was present during the negotiations and that even if such crime had occurred, it was well past the statute of limitations by the time it reached the investigator.

Mr. LEVITAS. Mr. Florence, the irregularities that you referred to, which were the predicate to your investigation, what was the nature of those irregularities?

Mr. FLORENCE. Primarily shifting of personnel in and out of the actual negotiations with the lessor. Another irregularity would be a missing document.

Mr. LEVITAS. Missing documents?

Mr. FLORENCE. Yes, sir.

Mr. LEVITAS. According to the testimony already, there obviously was a lot of confusion, but also GSA did not have a copy of the original, or the first agreement. There was a second agreement. We are going to hear later on that when they got to the hearing before the Board of Contract Appeals, there were different copies of what the agreement was.

Mr. FLORENCE. Yes.

Mr. LEVITAS. My question is this—I direct it to the entire panel: In your testimony, Mr. Trietsch, you make the statement, "When basic operational decisions for administration of this lease were assumed at the level of the Assistant Commissioner, the contracting officer * * *" et cetera, for the project lost his clout to deal with the investigation.

Here are the questions: No. 1, was the assumption of operational decision with respect to a lease normally assumed by the Assistant Commissioner? Second, why was the decision made to have the Assistant Commissioner assume it? Who made that decision?

Mr. TRIETSCH. In doing the preliminary work to write the report in 1980, it became clear in my review of early GSA documents that the creation of the Office of Operating Programs was made essentially to centralize the administration of leasing in GSA from region III at that time, which was the District of Columbia and five contiguous States to the central office, into the control of the Office of Operating Programs, specifically the Assistant Commissioner for Operating Programs.

So that prior to the creation of that office, leasing, negotiation and administration, were handled for the Washington, D.C., metropolitan area and the five contiguous States, in the regional office of GSA, rather than the central office of GSA.

Now as to the question of who made the decision in GSA to create the Office of Operating Programs, that was never quite clear. Certainly the Administrator of GSA at the time, Mr. Kunzig, and the Commissioner of the Public Buildings Service, Mr. Sampson, were not only aware of it but obviously played some role in making that decision.

Mr. LEVITAS. Were all leases then in the Washington area, the National Capital Region, transferred up to the Assistant Commissioner for handling?

Mr. TRIETSCH. As best I could determine, yes, they were. Essentially the regional officials in GSA, who had previously handled negotiations as well as administration of leases, began certainly at that time to lose control of that role. It was essentially a management decision made by the highest officials in GSA at that time.

Mr. LEVITAS. Mr. Stangeland.

Mr. STANGELAND. Was the Office of Operating Programs established at this time?

Mr. TRIETSCH. Yes, sir, it was.

Mr. STANGELAND. This was a new office just created?

Mr. TRIETSCH. Yes, sir, it was.

Mr. STANGELAND. A new policy adhered to, and you in your statement that the administration of this lease——

Mr. TRIETSCH. I am not able to answer that conclusively. I can definitively say that this lease was. I am not able to say that all leases previously handled in region III, or all new leases that were to be handled in region III, now called National Capital Region, were all handled in the Office of Operating Programs. This is unclear. The Office, incidentally, was officially created on February 18, 1971.

Mr. LEVITAS. How can we find that out, Mr. Trietsch?

Mr. TRIETSCH. I would suspect perhaps by asking individuals who were involved at that time, Mr. Roush perhaps. Mr. Roush would probably be the individual to ask as first Assistant Commissioner. You might ask whether or not he handled all leasing previously handled in the National Capital Region, then called region III.

Mr. STANGELAND. What is the policy today?

Mr. TRIETSCH. The policy today is as it existed prior to February 18, 1971. The leasing is handled in the regional offices; in each of the 11 GSA regions, not out of central office.

Mr. LEVITAS. I just have one more question at this point before I yield to the others, and then I will come back with some additional questions. The testimony appears to be from both GAO and from the IG's report, that this dispute was going on about building or not building the cafeteria, and then there are some critical dates in here.

On March 2, 1972, Town Center, the lessor, responded to Mr. Barton from GSA's request that the cafeteria be built, and the response was that the Government had the right to install food service and so forth. That is on March 2.

On March 10, GSA, in an internal memorandum, said that the lessor, Town Center, in a meeting with GSA officials, stated they had eliminated the cafeteria from further consideration when negotiations broke down. There had also been, as I recall, on the part of the contracting officer, Mr. Barton, a statement—this is, I think, very important—to the lessor that until such time as tangible evidence of adherence to the lease requirement is provided, all rental payments will be held in abeyance effective March 31. That was in a letter from Mr. Barton to the lessor February 28, 1972.

Then on April 19, almost 2 months later, Mr. Roush, the Assistant Commissioner, told the lessor that the Government would not pursue the actions discussed in the contracting officer's letter, that is, the withholding of rental payments, until all cafeteria requirements were completed.

Now my question is to any of you: Do you know why that decision was made to overrule the contracting officer?

Mr. TRIETSCH. The record is not clear in that area. As I indicated in the Inspector General report of 1980, the decision on the part of Mr. Roush to write the April 19 letter, which overruled the contracting officer's position, was in part predicated on discussions that occurred between the lessor and GSA, as well as between EPA officials at that time and the lessor, and EPA officials and GSA.

There was a strong desire at this time on the part of both GSA and EPA to occupy the space. The cafeteria requirement was considered secondary in terms of its importance. I think, in part, Mr. Roush wrote that letter because of the concerns that he had and that EPA officials had articulated about occupying the space for the senior EPA officials at the time.

It appears that he certainly left the option open by indicating that first of all, the Government would not withhold rent as previously stated in the contracting officer's February 1972 letter until questions about the lease provision for a cafeteria were resolved. I think that is also crucial.

He was not definitive in saying that under no circumstances in the future will we not withhold rent. He simply reversed the previous decision made by the contracting officer, and decided that in the future GSA, as well as EPA, would concern themselves with the lease provision for a cafeteria.

Mr. LEVITAS. Any other comments on that?

Mr. MITCHELL. No; we don't have anything to add to that. We simply don't know why he wrote that letter.

Mr. LEVITAS. I have some more questions, but I would like to call on the other members at this point. Mr. Stangeland.

Mr. STANGELAND. I would like to just touch on this a little bit. Mr. Florence, and Mr. Trietsch, you might want to comment as well because I am not totally clear. There was a lease signed either on the 19th or 23d of February, and I am assuming that is the first lease.

Mr. TRIETSCH. Yes, sir, that is correct.

Mr. STANGELAND. Does it matter which day it might have been signed on? Is that important? What is the problem whether it was the 19th or the 23d?

Mr. FLORENCE. Sir, that was a prelease agreement. That wasn't the actual lease.

Mr. STANGELAND. Is that the original or a copy of the first agreement that you discuss?

Mr. FLORENCE. Yes.

Mr. STANGELAND. Would it be presumed that a second agreement was actually the agreement that would supersede that first one, if there were any differences in the two agreements? Which agreement would take precedence?

Mr. FLORENCE. The second agreement is in effect now. We do not have the first agreement.

Mr. STANGELAND. Would it be inappropriate——

Mr. MOLINARI. Would you yield a second?

Mr. STANGELAND. Surely.

Mr. MOLINARI. The answer, the second one is in effect because we don't have a copy of the first one, what do you mean by that? You have lost the copy? There is no copy available? Therefore, whatever rights inure to the Government are being forgotten about?

Isn't there a legal method to secure a copy of that original agreement from the lessor?

Mr. FLORENCE. The lessor is in possession of a copy. The allegation was that the lessor's copy has been altered.

Mr. MOLINARI. You have a copy then?

Mr. FLORENCE. No, sir, he has the copy.

Mr. MOLINARI. Do you mind my pursuing this?

Mr. STANGELAND. Go ahead.

Mr. MOLINARI. There are allegations that it was altered but nobody has seen it to determine that it has been altered. Nobody ever got a copy of it. I find that astounding.

Mr. FLORENCE. We don't know even if it exists.

Mr. MOLINARI. Don't you think somebody should have attempted to determine whether it existed by pursuing the legal action that was available?

Mr. FLORENCE. Yes, sir.

Mr. STANGELAND. But there, again, the allegation of alteration couldn't be proven if GSA does not have an original of that same agreement.

Mr. FLORENCE. There is nothing to compare it with.

Mr. STANGELAND. My followup question:

If there is a second agreement signed, is it appropriate to destroy the first agreement, or should that first agreement have been placed in GSA's files?

Mr. FLORENCE. It most certainly should have been in our files, sir.

Mr. STANGELAND. And it should be a part of the record?

Mr. FLORENCE. Yes, sir.

Mr. TRIETSCH. If I may add to that, just for clarification purposes. The investigation that was conducted by Mr. Florence, which considered, among other allegations the alteration of documents, did not specifically concern the cafeteria provision, and I think that is significant, because while the Inspector General report of 1980, as well as the 1976 report of investigation prepared by GSA's Office of Investigations, specifically and exclusively dealt with the cafeteria provision. The alleged alteration of the document that Mr. Florence has just brought up does not specifically bear on the cafeteria provision.

That is a separate issue.

The solicitation, solicitation No. 55, was brought up by the lessor in 1972. He displayed to GSA what appeared to be a differing version of that solicitation. His version did not contain a provision for a cafeteria specifically, but rather for food facilities. GSA's version differed. That is a different document than what Mr. Florence is addressing. Therefore, there are really two separate issues here.

Mr. STANGELAND. What does the second agreement, the agreement that stands today, call for as far as a cafeteria, a food facility or a cafeteria.

Mr. TRIETSCH. The agreement that stands is GSA's document with respect to the cafeteria provision. It requires a cafeteria. Town Center Management's copy of the document only requires food facilities, so there obviously is an unexplained difference in the solicitation which was incorporated by reference into the lease. Again, that is a different document than what Mr. Florence was looking at. A different issue.

Mr. STANGELAND. The solicitation No. 55 that you referred to, does GSA have a copy of that soliciation for offer?

Mr. TRIETSCH. Yes, sir. As I understand it, the 1976 investigation report, and I believe I reviewed that in preparing my 1980 report, has as one of its appendices, a copy of both the lessor's solicitation No. 55 and GSA's solicitation No. 55.

Now it is notable, however, that Mr. Bresler, as president of Town Center Management, the lessor, first brought up the differing version in 1972, that is, the differing version of solicitation No. 55.

Prior to that date, there is no record that the differing version of the solicitation was made known to GSA. That is signficant in terms of the development and the chronology.

Mr. STANGELAND. How does the lessor account for those differing versions? Does he assume or did he assume that GSA had altered their copy of the agreement? It would seem to me that you have got a copy on record. You have a solicitation with specific requirements, at least I would assume they are specific, that should not be misunderstood. Then you have a lessor who has a different version of those requirements.

It would seem to me that GSA would have legal documents that would be clear in any court or any other way to require the lessor to comply with the document that GSA has on file.

Mr. TRIETSCH. Frankly, that is unexplained, and one of the points which is certainly questionable. In my report, and if I may read just a portion of a paragraph that addresses that issue, I think you can see how this solicitation, the differing version of solicitation No. 55, first arose. If I may, Mr. Chairman.

Mr. LEVITAS. Yes. I wish you would, because I think chronology is very important here.

Mr. TRIETSCH. Right.

Mr. LEVITAS. You made the point that the first GSA ever heard of the differing solicitation was in what, March 1972?

Mr. TRIETSCH. Yes; that is correct.

Mr. LEVITAS. And yet the dispute had been going on back into 1971, as I understand it.

Mr. TRIETSCH. For a year. Over a year.

Mr. LEVITAS. Over a year?

Mr. TRIETSCH. Right.

Mr. LEVITAS. And the first anybody said there was a differing solicitation?

Mr. TRIETSCH. Keep in mind now that on January 19, 1971, GSA issued solicitation No. 55. The solicitation requested offers to lease 400,000 square feet of office space in Southwest Washington. It was that solicitation that subsequently became incorporated into the lease, which was the lease agreement accepted by GSA; Town Center Management being the lessor. That occurred about a month later in February 1971.

On February 7, 1972, approximately a year later, the lessor responded to Mr. Barton's February 4th letter. Mr. Barton had sent a letter at that time, which simply stated that the lease required a cafeteria, that over 800 EPA employees occupied Waterside Mall, and that the lessor had not provided sufficient information on eating facilities to be established in the Mall. It was that letter that the chairman just pointed out was designed to essentially force the lessor to respond to the cafeteria provision. This is a year later.

Now on February 7, 1972, the lessor responded to Barton's February 4th letter, and for the first time took the position that the previously described private food facilities satisfied the lease provision for a cafeteria. This was approximately a year after the execution of the lease, when he took the position that the private food facilities satisfied the lease requirement for a cafeteria, and that as soon as additional information became available on new food facilities, private food facilities, he would notify the contracting officer.

Now during a meeting with the lessor on February 8, 1972, attended by both GSA and EPA representatives, the lessor argued that the restaurants and snack bars planned at that time for Waterside Mall would provide quality food at reasonable prices to EPA employees.

Further and most notably, I think, the lessor argued that these food facilities eliminated the need for a cafeteria. Still the issue of the differing versions of solicitation had not arisen.

In the face of the lessor's argument that the cafeteria requirement had been satisfied, the contracting officer sent the lessor a letter dated February 28, 1972. As you can see, this all took place during a month's time in 1972. This letter reemphasized the cafeteria requirement, and stated that the lessor's failure to provide adequate food facilities up to that date was not in compliance with the lease agreement, and that the failure to implement the provision would cause the contracting officer to withhold rent beginning on March 31, 1972 until such time as the lessor could provide tangible evidence that the cafeteria requirement was satisfied.

Now the lessor responded on March 2, 1972, in writing, indicating that the Government had informally waived the cafeteria requirement. Those are his words, "informally waived."

Further, at a meeting on March 30, 1972, the lessor produced a version of paragraph 10 of solicitation No. 55 which differed from the Government's version, and which the lessor pointed out simply provided for the Government's right to install a food service vending facility within the confines of the leased space. So it was on March 30, 1972 for the first time that the lessor raised the differing version of solicitation No. 55.

Mr. LEVITAS. What is that date again?

Mr. TRIETSCH. March 30, 1972.

Mr. STANGELAND. May I just ask about one more date in here?

Mr. TRIETSCH. Yes.

Mr. STANGELAND. At what point was this lease assumed at the Assistant Commissioner level?

Mr. TRIETSCH. In 1971.

Mr. STANGELAND. It was already there.

Mr. TRIETSCH. Oh, yes.

Mr. STANGELAND. But the contracting officer was using the leverage that he had.

Mr. TRIETSCH. I am sorry. It was in 1972, in February 1972. So it was during this period of time when the Assistant Commissioner for Operating Programs began to assume authority for the administration of the lease.

If I may just add to the chronology, this also may be part of the reason why Mr. Roush essentially reversed the contracting officer's position, which said to Mr. Bresler, we will withhold rent until you give us tangible evidence of compliance with the cafeteria provision.

As part of his response, Mr. Bresler came forward on March 30, 1972 and said, look, the private food facilities are progressing, in my judgment, and, in addition, you will note we have apparently differing versions here. And specifically, my version does not include a provision for a cafeteria.

At that time GSA said, that is unusual. We assumed your version included a provision for a cafeteria.

That may have been some of the motivation for Mr. Roush writing the April 19, 1972 letter a couple of weeks later, stating that the Government would not withhold rent as previously stated in the contracting officer's February 1972 letter, until questions about the lease provision for a cafeteria are resolved.

Mr. STANGELAND. And then no attempt at a resolution?

Mr. TRIETSCH. Well, there were meetings after April 19, 1972, but at none of the meetings for a crucial period of time, something like 3 years, was there a reversal of the position that Mr. Roush took in his April 19 letter, and in part it would appear that Mr. Bresler's version of the lease, specifically solicitation 55, paragraph 10, as incorporated into the lease, confused the GSA officials at the time.

They were surprised, I think, that there was this differing version, because nowhere in the record is there any indication that GSA officials involved, either the contracting officer, program coordinators, or even the Assistant Commissioner, knew that there was this differing version. It was first produced a year after execution of the lease.

Mr. STANGELAND. Is there a good record of the negotiations of these meetings that took place over a 3-year period, any kind of a diary?

Mr. TRIETSCH. No, sir.

Mr. STANGELAND. Those are verbal and off the record?

Mr. TRIETSCH. It would appear so. There were notes prepared by the project coordinator during August 1972 from which I quote in the report I prepared. There have been notes prepared also by other officials, but there are no notes, at least that I was able to find, that would commit to writing any of the meetings that took place during the crucial February–March 1972 period.

Mr. STANGELAND. As you were doing your report, was it difficult for you to locate the files about this Waterside Mall lease?

Mr. TRIETSCH. Yes, sir.

Mr. STANGELAND. And Mr. Coleman and Mr. Florence, did you have problems locating these files?

The reason I ask is that the subcommittee staff did have problems until you, Mr. Trietsch, made available your collection.

Mr. FLORENCE. Yes.

Mr. STANGELAND. Have you ever found as you have gone through files that some major items might be missing from files in other cases?

Mr. TRIETSCH. In other matters?

Mr. STANGELAND. In other cases.

Mr. TRIETSCH. Yes, sir.

Mr. STANGELAND. And there were major items missing in your files about the Waterside Mall lease?

Mr. TRIETSCH. Yes, sir.

Mr. STANGELAND. Have you had problems with files on other cases that you have looked at?

Mr. TRIETSCH. Mr. Florence might be able to best address that, or Mr. Coleman as the special agent in charge, but I have had difficulty from time to time.

Mr. COLEMAN. Yes, sir. Over the years in conducting investigations of contract fraud, I have had occasion to find that many times if the contract is 2 or 3 years old, the solicitation, which is usually a major part of the contract because it is incorporated in the contract, is missing, and on top of that, they are usually worded so poorly that you can't pin the contract down to certain responsibilities.

Mr. STANGELAND. Is that problem current now?

Mr. COLEMAN. I can't answer that. I personally haven't reviewed any of the more current contracts within the last 2 or 3 years, but when I was active on the street in investigating these things, I found that to be the case.

Mr. STANGELAND. It would seem to me that the Inspector General would perhaps want to take a look to see if that practice is prevalent today.

Mr. COLEMAN. Yes. Well, if we find something like that today, we will issue a management deficiencies report, and hope that the appropriate operating officials take some action.

Mr. STANGELAND. I would hope you would bring it to the attention of the subcommittee as well. I have more questions but I yield at this time.

Mr. LEVITAS. Mr. Molinari.

Mr. MOLINARI. Yes, thank you, Mr. Chairman.

I am somewhat confused, and I guess that is not too difficult in view of the history of this thing, and I would like to just get a few simple basics down.

This Waterside Mall complex, which I am not familiar with, was it a complex to be built originally, specifically to be occupied by EPA, or was it to provide for space to be occupied by other agencies who are private firms?

Mr. TRIETSCH. As best as the record indicated when I tried to assemble it and review it, indeed it was a building or buildings that were being newly constructed at the time. I do not believe, and I can't specifically address this, but perhaps some of the Public Buildings Service officials tomorrow can—that this was a so-called lease construction project, but I do know that the building was in progress at the time the lease was executed.

The lease was executed specifically to consolidate the newly created EPA at the time. There were apparently some 10 separate offices of the Federal Government that were combined under the umbrella of the new EPA. The first Administrator of EPA, Mr. Ruckelshaus, wanted to consolidate these in a single building someplace, and it was, I believe, on January 5, 1971, that the newly created EPA, for purposes of consolidating these 10 scattered offices, requested GSA to issue a solicitation for a single building. That is really the genesis of that lease.

Mr. MOLINARI. So now we are talking about a single building.

Mr. TRIETSCH. A complex.

Mr. MOLINARI. And included in that complex there was going to be room, at least in the thought of some people, for a cafeteria?

Mr. TRIETSCH. Yes, sir.

Mr. MOLINARI. In that same building?

Mr. TRIETSCH. Yes, sir, in the same complex.

Mr. MOLINARI. As the space started to be occupied by EPA, the Government was paying at least for that portion that was completed. Is that the way it happened?

Mr. TRIETSCH. I am not quite sure. I think that again the Public Buildings Service officials might be able to address that. The record or records that I was able to look at did not indicate that.

Mr. MOLINARI. Then let me ask you this: This space that was to be the cafeteria, according to GSA's interpretation, was rent being paid for that space at any time?

Mr. TRIETSCH. I believe so, but I am again not quite sure about that. There was essentially in the solicitation, a request to lease 400,000 square feet of space. When the two offers, were submitted to GSA, this was in February 1971, and there were only two, one by Town Center management, the other by L'Enfant Plaza West, Inc., the Town Center management offer being the lower offer and the one accepted, it was pretty clear at that time that the solicitation required a cafeteria.

In fact, I will read from a letter submitted to Town Center management's president, Mr. Bresler, and this letter was dated February 19, 1971, and contained the signature of Mr. Bresler accepting on behalf of Town Center the terms of the lease. Paragraph 2 of this letter states that:

> A cafeteria will be placed in operation on a phased basis concurrently with the delivery of the Waterside Mall West Office space. This cafeteria operation will be

expanded as additional space is delivered so as to provide adequate food service for the number of personnel occupying the space. The level of service which will be considered adequate shall be determined by consultation between the Government and the lessor.

Then paragraph 10(a) of solicitation 55, which turns out a year later to be the "differing version," states that: A complete cafeteria shall be furnished by the lessor at his expense . . . . All space occupied by the cafeteria shall be excluded from the area covered by the lease, and the lessor shall assume full control of such space without cost to the Government for rental, utilities, or other charges.

Now, those last two paragraphs, those two provisions, as incorporated into the lease represent the differing version that was first brought to the fore a year later.

Mr. MOLINARI. I would like to try to move on with just a couple more simple questions here about the cafeteria. It became an issue and the Board of Contract Appeals held hearings in July 1978 and then ruled that the lease required a cafeteria.

Are you familiar with that proceeding? Were you present?

Mr. TRIETSCH. No, sir.

Mr. MOLINARI. Was anybody at the table present at this hearing?

[No response.]

Mr. MOLINARI. Does anybody at the table know whether the lessor was represented at those hearings?

Mr. TRIETSCH. I believe the record indicates that the lessor was represented at the hearings.

Mr. MOLINARI. The lessor was represented. And what the Board did essentially is find that indeed GSA was entitled to a cafeteria. However, they found there was a de facto waiver as a result of the Government's inaction.

Was that decision reviewable, appealable?

Mr. TRIETSCH. The decision of the Board of Contract Appeals? I believe that it is, and to the best of my knowledge there has not been an appeal of that decision. That decision, to appeal, would have been made by the highest officials in GSA in consultation with the General Counsel. You may wish to ask those questions of the General Counsel representatives who may testify here perhaps.

Mr. MOLINARI. I think the chairman is about to tell us that we are going to have to go over and vote. But I have a very serious question in my mind as to why legal action was not pursued to ask for at least reconsideration by the Board, and why consideration was not given to some action to compel the lessor to perform in accordance with the lease. Put him to the test in a court of law, instead of having us in hearings.

It seems to me the simplest thing would have been to litigate the issue and then have at least a determination. Now you may have gotten a favorable determination so that the question of blame or whatnot may be something that this committee might still want to go into. But certainly we would have been able to resolve the basic issue as to whether the Government was entitled to a cafeteria, and whether you couldn't go ahead and see that that was done at this particular time.

Mr. LEVITAS. If my colleague would yield, I see Mr. Ting, who represented GSA, in the room.

Mr. TING. That is right.

Mr. LEVITAS. Before the Board of Contract Appeals?

Mr. TING. Yes.

Mr. LEVITAS. Are you scheduled to testify in this matter?

Mr. TING. Yes, tomorrow.

Mr. LEVITAS. I think we will get into some of this a little further tomorrow. I will just tell you of my own reaction. These hearings are not being held with a prejudgment, but I will tell you that when I asked that same question, in a series of questions all during this period of time, I got about as much bureaucratic jargon and runaround as I have ever heard in my life of the explanations as to why the Government didn't want to enforce its position.

My impression was very, very negative, but anyway, I just add that. I will say one other thing. It was an adversarial proceeding before the Board.

May I ask just one question? We are going to have to break in a minute to vote. At the time that Mr. Bresler first raised the question about the lease provision being met by the provision of private food facilities in that area.

Mr. TRIETSCH. Yes.

Mr. LEVITAS. Do you know whether or not Mr. Bresler or Town Center had leases with those private facilities in which part of the lease was based upon a percentage of sales?

Mr. TRIETSCH. I do not know the answer to that. I do know that the lessor during this period of time was negotiating with private facility vendors to lease space in the Mall area.

I don't know whether or not it was on a percentage basis.

Mr. LEVITAS. Maybe I can get this question started.

Mr. Florence, in your report of November, 1980, you state that neither the missing commitment letter nor a copy of it is in the GSA files and the only record of Mr. Bresler's signature on February 1971 counteroffer was on a copy provided by Mr. Bresler's attorney who was asked by Mr. Ting, GSA's attorney, to locate one for him.

Mr. FLORENCE. Yes, sir.

Mr. LEVITAS. I have what I think is a copy of your report or at least a portion of your report, and in that you say that a yellow file copy of the February 1971 letter was conformed by Doris Frankenfeld.

Did she work for GSA?

Mr. FLORENCE. Yes, sir.

Mr. LEVITAS. After you say she conformed the copy the original document was signed by Bresler and initialed by Doug Harvell, who was the contracting officer, and that Ms. Frankenfield made notations wherever she modified it to conform the changes. Is that correct?

Mr. FLORENCE. That is correct, sir.

Mr. LEVITAS. The yellow copy would then presumably have contained whatever changes she saw at that time?

Mr. FLORENCE. Exactly.

Mr. LEVITAS. But the conformed copy, the yellow copy, does not contain the changes or provisions that Mr. Bresler's copy contains?

Mr. FLORENCE. Yes, sir, but it is not initialed and dated.

Mr. **Levitas.** You make the statement, "Therefore, it is apparent that Bresler's letter did not originate from the final commitment letter." What do you mean by that?

Mr. **Florence.** It did not transfer the same advantages for GSA from the first to the second. However, the first did not conform. We don't have a conformed copy of it.

Mr. **Levitas.** You say, "Bresler's letter may have been altered." Then you say, "It is unusual that Bresler would have signed the acceptance letter without dating it particularly since the date line is prominently positioned before the signature line.

"Also the print in Bresler's letter is so poor that it is barely readable. Considering all of these circumstances, it is certainly possible that Bresler's letter was originally dated but was later whited out and then Xeroxed many times to cover up any trace of a deletion."

On this question of altering documentation, GSA alleged during the hearings on the cafeteria dispute that Bresler did just that to the Solicitation Offers.

Now, presumably, in light of the finding of the Board of Contract Appeals, that is precisely the factual finding that the Board made; is that correct?

Mr. **Florence.** To the best of my knowledge. Sir, could I stipulate that the report you are reading from is the inspection report which is included in my report? It is prepared by the Office of Inspection, GSA, under the Inspector General.

Mr. **Levitas.** It was the Office of Inspections?

Mr. **Florence.** Yes, sir.

Mr. **Levitas.** Which report was that? Was that the earlier report that was done?

Mr. **Florence.** Yes, sir.

Mr. **Trietsch.** No, sir. To clarify that, I think that the inspection report, as an appendix, was incorporated into the 1980 report of investigation that Mr. Florence prepared as an appendix.

It was upon that inspection report, which is dated, I think October 31, 1978, that Mr. Florence's investigation was predicated. So the inspection report is essentially a building block document prepared by another component of the Office of Inspector General, but clearly not a definitive report.

Mr. **Levitas.** One thing is clear, rightly or wrongly, correctly or incorrectly. The Board of Contract Appeals agreed with GSA's contention about the terms of the contract, and in order to do that, they necessarily had to disregard or disbelieve the letter which was supplied by the lessor.

Mr. **Trietsch.** Yes, sir.

Mr. **Levitas.** We have a vote on the floor.

The committee will stand in recess until 1:15.

[Whereupon, at 12:15 p.m., the subcommittee was recessed, to reconvene at 1:15, the same day.]

AFTERNOON SESSION

Mr. **Levitas.** The subcommittee will please come to order.

Mr. Molinari, I think it was, or Mr. Stangeland, asked questions about the efforts which were made following the April 1972 decision by Mr. Roush not to withhold or otherwise enforce the contract provision for the cafeteria. The testimony was that it was discussed in negotiations or in meetings.

Did you have a chance to speak to any of the participants in those meetings about their recollections of what was discussed or any evidence of the nature of those discussions about the cafeteria provisions?

Mr. TRIETSCH. With respect to my report, I did not. I did not interview any individual. I did take a look at, studied very carefully, the 1976 GSA report of investigation. Mr. Coleman may want to very briefly address that, but essentially all of the major participants were interviewed by the case agent at that time, Lee Johnson. I do believe that that matter was addressed in the 1976 report of investigation.

Mr. LEVITAS. In the 1976 report?

Mr. COLEMAN. Yes.

Mr. LEVITAS. The June 30, 1976 report?

Mr. COLEMAN. Yes; that is the one he is referring to, the one prepared by Lee Johnson.

Mr. LEVITAS. What was the nature of those discussions?

Mr. COLEMAN. I don't remember specifically what went on there, except for the fact that he did interview all of the participants, and that they seemed to suffer from lack of memory or each one begged off by saying, "I don't know what went on," and he would refer to someone else. And as a result of his investigation, it was inconclusive. He never did pin down exactly what transpired.

Mr. LEVITAS. Do we have the names of the individuals who participated in those meetings and the dates?

Mr. COLEMAN. If it is in that 1976 report.

Mr. TRIETSCH. We do, and I believe that they are contained in that 1976 report of investigation.

Mr. LEVITAS. During your investigation that resulted in the July 1980 IG report, did you determine that the lease agreement actually contained the requirement for the lessor-provided cafeteria facility?

Mr. TRIETSCH. It is very clear that the lease agreement, and specifically solicitation No. 55, which was incorporated into the lease agreement and therefore became part of the lease agreement, did indeed contain a provision which required a cafeteria. That, of course, is the issue that was subsequently brought up a year after the lease was executed, by Mr. Bresler, and that is where the differing version, solicitation No. 55, comes from.

Mr. LEVITAS. You presumably discussed this issue during the course of your preparation for the report, with the Legal Counsel's Office at GSA. Did you find that there was any division of opinion within the GSA Legal Counsel's Office as to the interpretation of this provision in the contract and the legal liabilities of GSA to enforce it?

Mr. TRIETSCH. Specifically, I did not discuss this with the General Counsel's Office. However, I did review all available documents related to the early General Counsel memoranda, discussions and so forth that took place. It is unclear from the record what role, if any, the General Counsel played in the series of communications that took place between the Public Buildings Service and the lessor during March and April 1972, when the Assistant Commissioner, Mr. Roush, advised the lessor that PBS would not withhold rent pending further study. Now that, to the best of my knowledge, is the only role the General Counsel was involved in during this period of time.

There appears to be, from the record, which is very scant, some General Counsel involvement throughout the years, but the record is very unclear as to what legal opinion was rendered by the General Counsel, if any. That indeed is one of the problems.

Mr. LEVITAS. Mr. Mitchell, we have been focusing for the most part on GSA at this point. In your investigation could you ascertain whether EPA played any role which might have resulted in the inaction or the failure to press for enforcement of this lease provision provided in the contract? What was the EPA's role in this?

Mr. MITCHELL. I wouldn't say they played any role. I do think, just as Mr. Trietsch has pointed out earlier, that EPA was continually, according to the correspondence, trying to get GSA to speed up and let them get space in there. They were also interested in the cafeteria, but they also wanted to occupy space. I think the only thing we saw on EPA, they are the ones that would continually let GSA know that the cafeteria was not available yet, but they also were the ones that wanted to get more people into office space faster, too. There also was some pressure on GSA to get the space ready for office space as well as the cafeteria. I saw no place in our review where they did anything to keep GSA from enforcing the contract provision.

Mr. LEVITAS. What about from the period after April 1972 until, I guess, 1975 or thereabouts? What was EPA's activity during that period of time?

Mr. MITCHELL. It was very quiet during that period as far as the correspondence that we were able to audit. We didn't see complaints, or too much complaint, by EPA or too much action by GSA either during the 1972–75 timeframe.

Mr. STANGELAND. Would you yield?

Mr. LEVITAS. Mr. Stangeland.

Mr. STANGELAND. Mr. Trietsch, you addressed that same issue in your report?

Mr. TRIETSCH. Yes, sir.

Mr. STANGELAND. I wonder if you might want to comment.

Mr. TRIETSCH. Yes, sir. I think that Mr. Mitchell's comments are very accurate, and I think that is one of the points that I stressed. During this 3½-year period, from 1972 through 1975, the record simply does not indicate any activity on the part of EPA, or for that matter on the part of GSA, which would indicate that either of the two parties were attempting to force the cafeteria issue.

It was only in 1975, apparently following some publicity, that it became an issue again. Now I don't mean to suggest that there were not EPA officials, perhaps union officials, or others, that did not raise the issue from time to time. But the record simply does not indicate that there was any significant activity during this 3½-year period, and that period of time is crucial in that the Board of Contract Appeals, which rendered its decision on March 31, 1980, also focused in on that, and indicated that if the cafeteria provision was indeed so crucial, then why did EPA or GSA not take some action during this 3½-year period.

Mr. **Stangeland**. Mr. Mitchell, on page 5 you refer to the contracting officer informing the lessor by letter, and this is still the August 1972 period, of GSA's final decision and course of action. But that notification was never, apparently, mailed, and that you could not determine why.

Do you know whether the contracting officer wrote this or did someone else write that letter, and can you make a guess as to why it wasn't sent?

Mr. **Mitchell**. We don't know whether the contracting officer wrote the letter or not, and I think that we are saying here we have no idea why it was not sent.

Mr. **Stangeland**. It is not dated—it is neither dated nor signed.

Mr. **Mitchell**. That is right. Let me go back. The contracting officer may have written that letter. Now, we don't know why it wasn't sent. That is what I am really saying. I don't know why it wasn't sent. We couldn't determine why it was not sent.

Mr. **Trietsch**. If I might add to that, I believe my report does indicate that the letter was prepared by the contracting officer, but there is no indication as to why it was not sent.

Mr. **Stangeland**. Do you think that the reason for negating the order to stop rental payments was so that the lessor could not have grounds to break his lease at that time? Was there a possibility that he could have gained financially by breaking that lease if GSA withheld rentals and then subsequently he could rent at a higher rate in a more favorable timeframe as far as rentals were concerned?

Mr. **Trietsch**. I think that was the concern on the part of the Office of General Counsel, as indicated in the project coordinator's notes. Now there is no record, and the GSA General Counsel attorney representing GSA before the Board of Contract Appeals was unable to find any record of this document from the files of the Office of General Counsel, which would have dated back to 1972.

There were two attorneys who retired in 1972, who were with the Office of General Counsel; Mr. Brister and Mr. Kaufman. Mr. Brister was the Assistant General Counsel. They concurred in the contracting officer's letter of February 28, 1972, regarding the withholding of rent in order to force compliance with the cafeteria provision.

Now there is no record, other than the contractor's notes, of that concurrence. Subsequently, however, it appears from the project coordinator's notes, written in August of 1972, some 5 or 6 months later, that the General Counsel's position had in fact changed, and that the determination to withhold rent was considered illegal.

Now, that is simply quoting from the project coordinator's notes. Whether the General Counsel's Office determined that it was illegal or simply impermissible, or would put GSA in a very difficult legal position, is unclear. There is simply no documentation on that.

Mr. **Stangeland**. But the other side of the coin is that if the lessor does not fulfill his part of the lease agreement vis-a-vis providing a cafeteria, then that diminishes his grounds for breaking a lease because of withholding rental payments?

Mr. **Trietsch.** Yes; that is true.

Mr. **Stangeland.** It is kind of a rock and a hard place.

Mr. **Trietsch.** If I may just very briefly quote from the project coordinator's notes in August 1972 precisely on that point, it states as follows: "The General Counsel's Office is presently investigating alternate methods of seeking relief from the lack of adequate eating facilities at Waterside Mall. Present thinking encompasses withholding of rental or refusal of future occupancy."

It then goes on to say that the "General Counsel has advised the Office of Operating Programs of their recommendations relative to legal alternatives for obtaining adequate food facilities. This report, in detail, is forwarded by memorandum."

That report has never been found, so we don't really know the legal alternatives that the General Counsel might have formulated at that time. However, what is notable, is that the project coordinator's notes further state that "This, therefore, negates refusal of occupancy. Withholding of rental payment has been termed illegal by Counsel. In an effort to force an early completion of restaurant facilities, a recommendation was offered to state our intent of rental holdback and utilize the psychological advantage."

The record is unclear.

Mr. **Stangeland.** That threat at least prompted a rapid response from the lessor by letter. Previously it had taken him a year to reply, and with that little bit of a threat he replied within—I think the timeframe was about a month.

Mr. **Trietsch.** Yes.

Mr. **Stangeland.** So it had some impact. I yield back.

Mr. **Levitas.** Mr. Coleman, what was your connection with the inspection report, case No. 27, October 31, 1978?

Mr. **Coleman.** Actually none. I am presently the Special Agent in Charge of the Washington field office. I have been for the past 2½ years, and back in June of last year they merged their fraud and abuse branch, which was a branch in the central office for which Mr. Florence worked, into my office. He completed his part of the investigation from June to November under my supervision. So I came into the matter late in the game.

Mr. **Levitas.** And Mr. Florence, in a sense, updated that report? Was his November 6, 1980, report an update of the October 31, 1978, report?

Mr. **Florence.** The October 31 report is the inspections report. That is by the inspections section. The Inspections Division has nothing to do with our office, which is the investigations section. It is their allegations upon which we predicated the November 6, 1980 investigation, and we included it in our report.

Mr. **Levitas.** So the reason you referenced or included the inspection report was because presumably the Inspector General's report of July 1980 developed some allegations that needed to be checked into?

Mr. **Florence.** Yes, sir.

Mr. **Levitas.** Do you want to supplement that, Mr. Coleman?

Mr. **Coleman.** I think we may be confusing it a little bit. The Inspector General's report of June or July 1980 was the one that Mr. Trietsch prepared.

Mr. **Levitas.** Right.

Mr. Coleman. And his was basically an analysis of the 1976 report plus additional information he was able to develop. The other situation is somewhat of a separate matter, in that Inspections conducted an inspection back in 1978, and produced this inspection report we are referring to, which precipitated our investigation conducted by Mr. Florence.

Mr. Levitas. When did your investigation begin, Mr. Florence?

Mr. Florence. In 1978.

Mr. Levitas. Following the issuance of the inspection report of October 31, 1978?

Mr. Florence. Right. In December 1978 we initiated our investigation in response to their report.

Mr. Levitas. Now, what precipitated the initiation of the inspection report that was issued on October 31, 1978?

Mr. Florence. I can't say for sure, but I can say that what I was able to develop is they were doing what we call pre-active investigating at that time, that is, looking at various leases to see if there were irregularities and to pinpoint them for areas of investigation, which is their function.

Mr. Levitas. In that report, case 27, which is the inspection report, which you incorporated into yours—on page 5 is an interview with a Richard Gaskins, who is identified as Director of the Leasing Division of central office. It says that he heard that Bresler had accepted a proposal whereby he would provide all services and utilities as part of the rent, but subsequently, as a result of pressure by Kunzig, got GSA to delete that provision. Did you try to check that out in any way, Mr. Florence?

Mr. Florence. No, sir, I didn't. May I disagree a bit?

Mr. Levitas. Sure.

Mr. Florence. When I received their report and discussed it with people in Special Projects under the Inspector General to determine if there were criminal issues and to determine if they were prosecutable, we found we were well past the statute of limitations and we began to think of civil litigation coverage. Some of these criminal elements are not there because of that.

Mr. Levitas. I think your report states that Mr. Gaskins went a little bit further in his original conversation with Spock, who I think was involved in that case 27 inspection report, and identified the source of the story I just referred to as being a Mr. Shipp; is that correct?

Mr. Florence. Yes; I spoke with Mr. Shipp.

Mr. Levitas. Did you speak to Mr. Shipp about that?

Mr. Florence. If I can refresh my recollection just a second.

Mr. Levitas. Sure.

Mr. Florence. The upshot, when I talked to Mr. Shipp, was that Mr. Shipp was called by Mr. Kunzig and told that he was too aggressively negotiating the lease, and at that time Mr. Shipp said he was taken out of the channels where the lease was being talked about.

Mr. Trietsch. Incidentally, Mr. Chairman, I believe that statement also comes out in the 1976 investigative report when Mr. Shipp is interviewed by Mr. Johnson. Mr. Shipp has made those statements on more than one occasion. He believes that the Administrator of GSA at the time, Mr. Robert Kunzig, rebuked him for being too aggressive in negotiating the lease, and consequently removed him from his role in that negotiating process. This, of course, was in 1971.

Mr. LEVITAS. And it is also part of what Mr. Gaskins said that GSA deleted a provision which would have had the lessor pay services and utilities, and I am quoting, "as a result of pressure by Mr. Kunzig." Now, the significance of that is that back during the negotiating period, Mr. Kunzig, who was then head of GSA, was not only involving himself with negotiations of this lease as head of GSA, I imagine, but was trying to get less favorable terms for the Government than his subordinates were trying to negotiate.

Then, subsequently, when the issue arises, we find that responsibility for the management of this contract was removed from the contracting officer and the project coordinator and it went back up to Mr. Roush, and Mr. Roush says, "We are not going to withhold rent or enforce that provision at this time for the cafeteria." There just seems to me to be a lot of indication of some upstairs pressure. You are professional investigators; am I seeing something that doesn't exist? Am I am looking at a ghost or smoke?

Mr. COLEMAN. No, sir, it appears that way to me, too.

Mr. TRIETSCH. I think the 1976 report of investigation also indicates in the interviews with some of the participants at that time, that they believed there was clearly an eagerness on the part of senior GSA officials to get EPA, particularly the senior EPA officials, into the space as quickly as possible. The perception clearly is that that was the primary motivation behind the pressure at that time by GSA senior officials.

Mr. LEVITAS. What was Mr. Shipp's role during the negotiation period?

Mr. FLORENCE. He was in charge of the primary negotiations with the lessor.

Mr. LEVITAS. There is something that is curious to me, about the fact that the head of GSA, who is responsible for Public Buildings Service, procurement, automobiles, records, archives, things of that sort, is involving himself apparently directly in the negotiation of a lease for some space in Washington. Did you ever get any explanation? Have you spoken to Mr. Kunzig?

Mr. FLORENCE. I haven't spoken to him. I asked Mr. Shipp if he considered it unusual to be told that he was handling this too aggressively and to be removed, and he said that was within the purview of management prerogative.

Mr. LEVITAS. But did he answer your question?

Mr. FLORENCE. No.

Mr. LEVITAS. You asked him whether it was unusual?

Mr. FLORENCE. Yes, sir.

Mr. LEVITAS. He said it was within their purview?

Mr. FLORENCE. Yes.

Mr. LEVITAS. I may have some additional questions, gentlemen, which I will submit in writing,[1] and incidentally, for the benefit of the record, all members will have the opportunity to submit questions within a 10-day period.

Mr. Stangeland, do you have any further questions?

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[1] The questions referred to were subsequently asked at the December 3, 1981 hearing.

Mr. STANGELAND. Yes, Mr. Chairman, there are some questions that I may submit in writing.

Mr. LEVITAS. Thank you very much.

Does counsel have any questions?

If not, thank you very much for your contribution to this investigation. As I say, we will submit some additional questions for the record. I appreciate your assistance.

Mr. STANGELAND. I guess I do have one question for the record. I apologize.

Mr. Mitchell, concerning GAO's recommendation discussed on pages 8 and 9 of your statement that GSA set a firm date for the lessor cafeteria, and if it was not met, that GSA establish a cafeteria in Government-leased space, you suggest that GSA withhold rent. Do I understand that recommendation to refer to two separate figures, that GSA withhold from the lessor, one, to cover the cost of the cafeteria, the other, to cover the amount of damage determined from the time the cafeteria was required until effective opening date of an acceptable cafeteria, and are you still standing by the recommendation that they should have withheld the rent?

Mr. MITCHELL. May I ask Mr. Hunter, Assistant General Counsel, to reply?

Mr. HUNTER. The recommendation did recommend both kinds of withholdings. At this point I wouldn't make that recommendation in view of the ruling of the Board of Contract Appeals and the decision of GSA not to appeal it. That recommendation was made in 1977, which was sort of in the middle of this whole process. At the time we felt that some kind of more aggressive action by GSA was clearly warranted, and that was really the thrust of our recommendation to have them do something that would prompt some action by the landlord, even if it was to get the matter in court.

Mr. STANGELAND. In your opinion should GSA have appealed the Board of Contract Appeals decision?

Mr. HUNTER. At the time the Board of Contract Appeals rendered its decision it became a pretty closed case, because of all the things that we have discussed this morning. I certainly can't challenge GSA's decision not to appeal it. If I were sitting over there instead of where I am, I might have decided to appeal it. It is a tough question to answer.

Mr. STANGELAND. Thank you. Thank you, Mr. Chairman.

Mr. LEVITAS. I think that is a good line, Mr. Stangeland. Let me just pursue it a little bit further.

At the time that somebody decided to try to enforce the lease provision, after Mr. Barton's efforts were spurned back in 1972, the question then arose, how do you go about it? GSA tried to enforce the provision through the administrative process, which ended up with a contracting officer decision letter, followed by an appeal by the lessor to the Board of Contract Appeals. One alternative method that was considered was for the government to withhold rent, and essentially to build the cafeteria itself.

One of the concerns there, was that the landlord would have either litigated or attempted to break the lease for nonpayment of rent, and thereby have an empty building presumably down at Waterside Mall, possibly at much higher rentals. Is that essentially the problem?

Mr. Hunter. Yes; I think it is, and it was after our recommendation that I became aware of GSA's counsel's position that you couldn't enforce the cafeteria requirement under the clauses that were in that contract. I think the record of the Board of Contract Appeals hearing indicates that they took that position a lot earlier. Once you start arguing that you have no clause in the contract that gives you a clear right to withhold the rent, then you bring into play all of the problems that you just suggested.

Mr. Levitas. And GAO thinks that GSA ought to put these clauses in their leases?

Mr. Hunter. Definitely. They would have to modify some of the standard clauses to fit this situation, but certainly if that had been done, we might not have been faced with the problems that we are faced with now.

Mr. Levitas. In a bill which is cosponsored by Mr. Stangeland and myself dealing with some reforms in GSA, is a requirement that we would put into law to cover a situation just like this. But one other question: In your reading of the opinion or decision of the Board of Contract Appeals, can you identify the timeframe, in which the de facto waiver occurred?

Mr. Hunter. I think Mr. Trietsch or one of the witnesses indicated that it was in the early period. My impression is that the entire process, everything that took place, led them to the conclusion that there was a waiver and estoppel.

Mr. Levitas. Would the waiver, estoppel or abandonment, or whatever it was, have occurred prior to 1975?

Mr. Trietsch. I think the implication is clear that the board believed that the waiver did take place prior to 1975, so that had they rendered their decision in 1976, for example, hypothetically they would have made the same decision. That is my belief, my understanding of their opinion.

Mr. Levitas. I think that is very significant. I have had concerns about GSA's failure not only to pursue this matter early on, but to pursue it after 1978. And, indeed, pursuing the question raised by Mr. Molinari, why not appeal it? But I must tell you, in my conversations with people at GSA about this, I found a great deal of reluctance on their part or lack of interest to get into it. I kept getting more explanations of why they wouldn't do it than why they would do it. Yet it was a valuable property right that belonged to the Federal Government for the benefit of employees of the Federal Government, which was presumably paid for in the rental agreement.

That is all I have. Thank you very much.

The next scheduled witness is Mr. Harold Dodson. Mr. Dodson, I understand, is not here, so why don't we move directly to the witnesses from the Environmental Protection Agency, Dr. John Horton, Mr. Edward Hanley, Mr. Jack Tarran, and Ms. Nell Minow.

If you would please come forward. Gentlemen, I understand Ms. Minow is delayed. We can get started. When she comes in she can participate. I would like to administer the oath. Do you solemnly swear that the testimony you will give this afternoon to the committee will be the truth, the whole truth and nothing but the truth, so help you God?

[Chorus of "I do."]

Mr. LEVITAS. Thank you very much.

TESTIMONY OF DR. JOHN HORTON, ASSISTANT ADMINISTRATOR FOR ADMINISTRATION, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY EDWARD J. HANLEY, DIRECTOR, OFFICE OF MANAGEMENT INFORMATION AND SUPPORT SERVICE; JACK TARRAN, FACILITIES MANAGER; AND NELL MINOW, ATTORNEY, FORMERLY WITH EPA, BOARD OF ASSISTANCE APPEALS

Mr. LEVITAS. Dr. Horton, I understand you have a statement.

Mr. HORTON. I am John Horton, Assistant Administrator for Administration of the Environmental Protection Agency. I have with me Mr. Hanley, who is Director of the Office of Management Information and Support Service, and Mr. Tarran, who is our Facilities Manager.

I believe the committee has copies of the statement that we have prepared, and as such I will not bother to read it. I would only say that we have already looked into this matter of the cafeteria. We have talked to our General Counsel about it. We have talked to our Inspector General about it. I am having a meeting later this afternoon which has been set up for some time with Mr. Carmen, who is Administrator of GSA, on this particular issue.

Our point of view is not so much that we are anxious to get after people who have perpetrated deeds in the past, but rather to get some restitution at the present time. It is the opinion of our General Counsel that we should push GSA to appeal the decisions that have been made, to reopen the case, and if the landlord is unable to provide us with cafeteria services, then to provide financial restitution for 10 years in which the necessary cafeteria facilities were not available, and to get an alleviation of lease payments in the future because it is not there.

Our employees do not have the type of facilities that one would have expected them to have. While there are some commercial establishments in the area at which employees can eat, most of our employees bring their own lunch because they have nothing else to do. They either do that or they purchase snacks from the blind stands which are located in the two towers.

This is the nature of the food service facilities we have. I don't believe that is what is intended. From my point of view we are not providing the type of working environment for our employees that I would like to see us have. At least if we are not able to have proper facilities the agency should not be expected to spend money for facilities, that it did not get. It happens to be our position. We will be working with GSA on it. I intend to reopen the issue and see if we can't do something about it. What happened 8 years ago or so is somebody else's business. I am concerned with today.

[Mr. Horton's prepared statement follows:]

STATEMENT OF
DR. JOHN HORTON
ASSISTANT ADMINISTRATOR
FOR ADMINISTRATION
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 1981

I appreciate the opportunity to testify before this committee on one of the most complicated and controversial issues in EPA's history--the case of the missing cafeteria. I have prepared a chronology of events concerning the cafeteria which is included as an appendix to my testimony, so I will not repeat it here. I am also submitting a copy of the amicus brief filed by EPA in the hearing before the GSA Board of Contract Appeals. But there are a few points which deserve some emphasis and illumination, so I would like to discuss those now.

As you know, EPA is not a party to the lease, which is between the General Services Administration (GSA) and Town Center Management (TCM). Therefore, even though we are the ones who have borne the inconvenience and expense of not having a cafeteria, we have been unable to take any direct action to force Town Center Management to provide one.

The only point that all of the parties agree on is that a lease was signed in 1971, providing that EPA would occupy Waterside Mall. But even the terms of that lease are contested. At the hearing before the GSA Board of Contract Appeals, GSA and Town Center Management submitted different versions of page 27 of the lease, each claiming that its version was the one in the lease which was originally signed. GSA's version contains paragraph 10(a) which contains an explicit and detailed requirement for "a complete cafeteria facility" to be furnished at Town Center Management's expense. Town Center Management's version of page 27 contains a paragraph 10, which provides that the Government has the right to install a food service or vending facility within the leased space, to be operated by blind persons licensed under the provisions of the Randolph-Sheppard Act.

The record demonstrates conclusively that it was the GSA version of page 27, which requires a cafeteria, which was in the lease signed in 1971. The version submitted by Town Center Management first appeared when it became clear that the cafeteria was going to be more expensive than Town Center Management had originally planned. Town Center Management submitted an amended proposal to GSA containing a provision which said that "a cafeteria or cafeterias shall be provided in accordance with paragraph 10(a)...." When that proposal was accepted by GSA, that offer became binding on Town Center Management. The Town Center Management proposal refers explicitly to paragraph 10(a), which is found only in the page 27 that Town Center Management alleged it did not have. The Town Center Management proposal incorporates paragraph 10(a) by reference. That alone is enough to prove that GSA's version of the lease is the one originally agreed to, and enough to require Town Center Management to provide us with a cafeteria.

The record also demonstrated that Charles Bresler, President of Town Center Management, repeatedly assured representatives of GSA and EPA that a cafeteria facility would be provided, and that he referred to the requirement that the cafeteria operator control the income from the vending machines, also included only in the paragraph 10(a) which Town Center Management later claimed was not a part of the lease.

After negotiations with the original operator fell through, Town Center Management first claimed that the cafeteria requirement was not that contained in paragraph 10(a). Town Center Management argued that the cafeteria was to be in the leased space, that it was to be provided at a cost plus 10 plus 10 formula, and that it did not have to be provided if it was not practicable. Later Town Center Management argued that the cafeteria requirement in the lease had been waived.

Town Center Management was unable to present a single piece of reliable evidence that a valid waiver had been made. All it had was a letter from a Regional Administrator of GSA to a reporter for Federal Times, referring to the "waiver." At the hearing, both the Regional Administrator and the employee who drafted the letter testified that they had been mistaken, and that no waiver had ever been made. There is no evidence whatsoever that the contract officer, the only one with the power to waive a contractual requirement, had made a waiver of any kind.

After doing its best to convince us that there was no cafeteria requirement, and that even if there is one, it was waived, Town Center Management argued that even if the requirement was not waived, it was met by the local eating facilities. By this, Town Center Management refers to a Roy Rogers, a Blimpies, a Hectors, a pizza parlor, and a People's Drug Store lunch counter. Paragraph 10(a) sets forth explicit requirements about non-disposible tableware, seating capacity, etc., none of which are met by the fast food places in the building. We invite the members of this committee to come to Waterside Mall for lunch some day, to make your own determination about whether these places are the "high quality and convenient food service, under sanitary and healthful conditions" required by the lease.

The GSA Board of Contract Appeals hearing was held in the summer of 1978, seven years after the lease was signed. The administrative law judge who presided over the hearing was fired soon afterward without issuing a decision. Another administrative law judge was assigned to the case, and he stayed only long enough to deny the landlord's petition for rehearing, and then he retired. The third administrative law judge assigned to this case finally issued a decision in April 1980, almost two years after the hearing. He found that the lease did require a cafeteria, but that GSA has implicitly waived the Government's right to the cafeteria by failing to pursue it actively. In essence, the decision provided that GSA must withhold rent and refuse further space over a period of years in order to maintain and protect its right to one lease provision, such as a cafeteria. As far as we know, there is no legal basis for making this determination, particularly in the face of Town Center Management's bad faith. In fact, the General Counsel at GSA has determined that GSA has no right to withhold rent. Despite what we believe to be obvious legal flaws in the decision, and the potentially devastating implications of this decision for the Government's lease program, GSA has failed to petition for reconsideration or pursue the matter further.

GSA did assign the Inspector General to investigate the matter. We believe the Inspector General's report was woefully inadequate. The IG's report glosses over both the question of GSA's gross neglect and possible misconduct and the issues of Town Center Management malfeasance and blames the problem instead on organizational changes and confusion. The IG report does point out that "there is no evidence in the record to support the statements made (by Town Center Management)," and that the alleged differing version of paragraph 10 was raised by Town only after the difficulties over the cafeteria issue were raised by EPA and GSA.

While the IG report refers to the newspaper articles about this case, it never addresses the allegations of fraud and graft in those articles. While the report explains that Town Center Management's alternative version of the lease provision first appeared in 1972, it does not pursue the implications of that provision's appearance. While the report mentions the commercial food facilities in Waterside Mall, it makes no effort to compare them to the explicit, detailed requirements of the original paragraph 10(a).

The problem of the missing cafeteria may seem a small one to you. But to us it is a symptom of the past years of frustration in trying to achieve a decent workplace for our employees. GSA has informed us that we are not parties to our own lease, so that we have no right to pursue the cafeteria on our own. That made it all the more ironic when GSA's own Board of Contract Appeals decided that it was GSA's failure to pursue our right to a cafeteria which would deny us that right forever. Estimates range as high as $100,000 per month in tangible loss to the government from Town Center Management's failure to meet its contractual obligations. And that estimate does not include a percentage of the rental payments, which were originally calculated with paragraph 10(a) in mind. Town Center Management is being paid twice, once by us, and once by all of the other tenants occupying the space which should be our cafeteria. Don't ever let anyone tell you that there is not such thing as a free lunch. We hope very much that the investigations being conducted by this committee will prevent these abuses in the future.

EPA CAFETERIA

The initial requirement for furnishing of adequate cafeteria facilities for EPA Headquarters employees was contained in the General Lease. The Specifications and Requirements prepared by the lessor, dated January 19, 1971, state:

> Cafeteria: A cafeteria or cafeterias shall be provided in accordance with paragraph 10(a) of Schedule B, Part III of the offer. Said cafeteria shall be operational concurrent with or prior to occupancy of the general office space by the lessee.

September 20, 1971 - December 1, 1971
Advised GSA that although we had nearly 600 employees at Waterside Mall, all that existed were vending machines and no fully satisfactory eating facilities on site.

February 4, 1972
GSA sent a letter to the building owner expressing concern for continued lack of adequate cafeteria facilities. A listing was requested from the owner showing the eating facilities he would provide, how soon they would be operational, and their adequacy in terms relative to lease requirements.

February 28, 1972
The GSA lease contracting officer (Arthur O. Barton) notified the building owner that until such time as tangible evidence of adherence to the cafeteria requirements of the lease, all future rental payments would be held in abeyance effective March 31, 1972.

March 2, 1972
In response to the February 28, 1972 letter the building owner stated:

> "... I feel that we have fully complied with the solicitation and our negotiated agreements, however, if you do insist on a Government operated food facility we will make such space available to you. I will be happy to meet with you to further discuss this matter."

April 11, 1972
The Deputy Assistant Administrator for Administration (Mr. Messner) was advised by GSA that their office of General Counsel was investigating what legal course they have to ensure that proper eating facilities are provided in accordance with the building owners lease requirements.

August 23, 1972
GSA was advised by the Director, Data and Support Services Division (Mr. Nies) that the lack of a cafeteria or reasonable alternatives costs the government $2,415.00 each working day due to the employees leaving the complex for lunch.

December 12, 1972
GSA was reminded that despite the current population of 1,600 employees in the complex, with a planned increase to approximately 3,000 in the spring, the available eating facilities were still not adequate.

March 8, 1973
Request made to GSA to make available to our employees hot foods (soups, sandwiches, etc.) through the establishment of a facility operated by the District Enterprise for the Blind at our Waterside Mall site. Two stands were subsequently established.

September 3, 1975
An article appeared in the Federal Times entitled "Case of the missing cafeteria."

October 1, 1975
Letter from Deputy Assistant Administrator for Administration (Mr. Rhodes) to GSA soliciting their views and cooperation in determining the feasibility of currently establishing a cafeteria at Waterside Mall. The issues suggested for consideration were (1) determining what uses are permitted by the modified Urban Renewal Plan for Southwest Washington under the landlord's 99-year lease with the Redevelopment Land Agency (2) whether the landlord is willing, unwilling, or legally unable to provide a cafeteria and (3) whether it is possible given our present pattern of occupancy to construct a cafeteria.

January 9, 1976
Administrator EPA met with Administrator GSA and urged him to re-examine the possibility of forcing the builder to provide a cafeteria or, failing that; a lunchroom. Mr. Eckerd indicated he had already instigated an investigation and that he was sympathetic to EPA's cause.

February 1976
GSA Contracting Officer ruled that the building owner was required to provide a cafeteria for EPA employees.

May 1976
Building owner appealed decision.

June-November 1976
GSA and building owner negotiating to provide a cafeteria.

January 25, 1977

GSA approved tentative plans for expansion of Subway cafeteria.

April 1977

Building owner still had not delivered final cafeteria plans to GSA.

July 1977

Building owner reinstated appeal to Board of Contract appeals.

August 1977

Deputy Administrator urged GSA that since the building owner failed to provide a facility they reduce the rate of rent by the value of a cafeteria and provide a contractor operated cafeteria for EPA.

September 20, 1978

GAO report recommended that GSA establish a cafeteria and recover damages from Town Center for noncompliance with lease.

September 1977 - January 1978

No action taken by GSA since matter was being heard by Board of Contract Appeals.

September 1978 - October 1978

Hearings completed. EPA submitted an amicus curiae brief in support of Government position.

December 20, 1979

EPA Deputy Administrator advised new GSA Administrator of problem and asked for status report.

January 28, 1980

GSA indicated they expect a resolution in near future.

April 1980

GSA informed EPA that the Board ruled that, since GSA did not actively pursue the matter, they had, in effect waived the government's rights to a cafeteria.

July 1980

GSA Inspector General report found that internal conflicts and confusion and absure lines of authority caused the cafeteria issue to languish in uncertainty.

July 25, 1980

EPA Deputy Administrator (press release) asked GSA to provide a cafeteria for EPA employees.

December 10, 1980

GSA Administrator advised that recent survey concluded that a cafeteria could not be supported and that they do not currently plan to provide a cafeteria for EPA employees.

Mr. LEVITAS. I want to thank you for your statement, Dr. Horton. Your entire written statement has been made a part of the record. The amicus curiae brief will be retained in the subcommittee file.

Our concerns are necessarily at both levels. We are concerned that the employees at the Environmental Protection Agency do not have appropriate facilities, as you have testified to, and we would like to see that remedied. By the same token, we are most interested in finding out how it got to this point, and we hope to do so.

While you didn't say so in your testimony, I take it that this matter has been discussed with the employees or with representatives of the employees by officials of EPA.

Mr. HORTON. Not in any formal fashion, just in general. But in talking to the employees we have found out what they do do about their lunchtime habits. It has been on that sort of a basis that I am able to give you that comment.

Mr. LEVITAS. Is the position that you have stated today—which I commend you on—is this a matter that you have discussed with the Administrator or Deputy Administrator of the agency?

Mr. HORTON. Ms. Gorsuch knows we are looking into this matter, yes.

Mr. LEVITAS. I will have some other questions but at this point I will administer the oath to Ms. Minow: Do you solemnly swear the testimony you will give before the subcommittee today will be the truth, the whole truth and nothing but the truth, so help you, God?

Ms. MINOW. I do.

Mr. LEVITAS. Thank you. Ms. Minow, I understand you were involved in the EPA's role in the proceedings before the Board of Contract Appeals; is that correct?

Ms. MINOW. Yes, sir.

Mr. LEVITAS. Could you just briefly outline what the position was that EPA was taking on that proceeding?

Ms. MINOW. Yes. I believe that the amicus brief, which I drafted and which is signed by Joan Bernstein, who was then General Counsel of EPA, is a part of the record, but I will be happy to summarize it for you.

Mr. LEVITAS. Proceed, please.

Ms. MINOW. It was our position that paragraph 10(a), which is on page 27 in our copy of the lease, was operative and binding on the landlord, and continues to be, and that is the briefest possible summary. We did, in our amicus brief, answer the points raised concerning the waiver. We argued that there was never a valid waiver, and that the landlord was not meeting his responsibility.

He presented testimony at the hearing as to how long it took to walk to nearby restaurants, and of course we argued that that was utterly irrelevant. The point was that according to our reading of our version of the lease, he was obligated to provide a cafeteria. He had not done it.

He also argued that the contracts that he had with the fast-food places in the Mall precluded his providing a cafeteria, and we, of course, replied that this was immaterial. He had negotiated those leases after we signed ours, and that was his problem.

Mr. LEVITAS. You refer to your version of the lease. We have also the landlord's version of the lease, which did not specifically provide for a cafeteria.

Ms. Minow. Yes.

Mr. Levitas. We have GSA's copy of the lease, and there is a provision for the cafeteria in their copy of the lease. Now where did EPA get its copy of the lease, and at what time? Was it a copy that appeared in the letter to EPA simultaneously with the execution of the original lease; or was it not?

Ms. Minow. With your permission, I would like to defer to Mr. Tarran because he gave me my copy of the lease.

Mr. Tarran. I think I got that copy from GSA about 1976, somewhere in that time.

Mr. Levitas. About 1976. Usually when papers come into offices, people stamp "Received" on them with the date or something like that.

Mr. Tarran. The copy that I have has no indication on it when it was actually received, sir.

Mr. Levitas. And you say it came from GSA?

Mr. Tarran. I believe I did get it, yes, from someone in GSA.

Mr. Levitas. What all of a sudden prompted EPA to get a copy of that lease?

Mr. Tarran. At that point I believe what we were trying to do was to find out from the lease what services we were entitled to. At that point I don't think we were concentrating on the cafeteria question as such. My memory is a little hazy on that. I think that is what we were doing at that point.

Mr. Levitas. I have several other questions that I need to ask you about, but I have to go vote. As a matter of fact, it is the conference report on HUD and independent agencies, which I believe includes EPA, so it will be significant.

Mr. Horton. Mr. Chairman, I am having a meeting, as I told you, with Mr. Carmen this afternoon. I wonder if it would be possible for me to be excused then.

Mr. Levitas. At what time is your meeting?

Mr. Horton. It is at 2:30.

Mr. Levitas. Yes. I had one other question I wanted to ask you, which was this—well, maybe you could answer it better after you have met with Mr. Carmen. Quite frankly, I would like to find out what sort of cooperation you are getting from GSA.

Mr. Horton. I would like, in that respect, to have the opportunity to submit additional statements after that meeting.

Mr. Levitas. One question you can submit an answer to is what response and cooperation you get from Mr. Carmen.

The committee stands in recess for 15 minutes.

[Recess.]

[The following statement was received from Mr. Horton:]

Further Testimony to the Testimony Given by Hon. John P. Horton Before the House Committee on September 15, 1981

Subsequent to the testimony given on September 15, 1981, I have met with Gerald P. Carmen, Administrator, General Services Administration to discuss the matter of the Cafeteria. Mr. Carmen and his Assistant Terry Davis, attended the meeting and assured me that they would look into the matter with attention.

Shortly after that the EPA Inspector General submitted a report to me on their assessment of the losses sustained by EPA because of the absence of the Cafeteria. This report was turned over to the Inspector General of GSA. The matter is being further discussed between the Inspectors General and it is anticipated that a further meeting will be held within the next two weeks, that is before the end of October, to see what action should be taken next.

There appears to be a cooperation between GSA and EPA in trying to find a way to resolve this matter.

Mr. LEVITAS. The subcommittee will please come to order.

What was the reaction of GSA's General Counsel to the briefs which were submitted by EPA to GSA's Board of Contract Appeals?

Ms. MINOW. Well, Congressman, we got an inconsistent reaction from them. They had originally solicited our support and, although this was before I became involved, I believe they had even invited us to attend the hearing, although no one from my office was able to do so.

When the hearing was completed they informed us of the briefing schedule, and even supplied us with a copy of the transcript and copies of all of the exhibits. I spent some time with Mr. Ting and Ms. Shaines, who were working on the case and were very cooperative.

We then filed an amicus brief and received a letter from the General Counsel to our General Counsel objecting to that filing, and saying that we had tried to circumvent her authority. I have given a copy of that letter to Mr. Nolen, so it is in the record.

Mr. LEVITAS. Do you have a copy of that letter? I would like to see it. I do want to make it a part of the record, without objection.

Ms. MINOW. I believe our response to that letter is also in that package.

Mr. LEVITAS. Without objection, I would like that to be a part of the record as well.

[The following was received for the record:]

General Services Administration
Office of General Counsel
Washington, DC 20405

DEC 27 1978

Joan Z. Bernstein, Esq.
General Counsel
Environmental Protection Agency
401 M Street, SW.
Washington, DC 20024

Dear Ms. Bernstein:

Subject: Docket No. 4574-R - Appeal of
Town Center Management Corp.
Lease No. GS-03B-5788

We wish to bring to your attention a matter of importance concerning the above-referenced appeal. This appeal, as you know, involves a dispute between the General Services Administration (as lessor) and the Town Center Management Corporation (as lessee) over the lessee's contractual obligation to furnish, install and operate a complete cafeteria facility.

After the case was reinstated to the General Services Administration Board of Contract Appeals in March 1976, attorneys from our Claims and Litigation Division coordinated with your office (through James Nelson, Esq.) throughout the pretrial stages of the case. The case was litigated before the Board of Contract Appeals in a 6-day hearing in July 1978. Although your office was advised of the proceedings, no representatives attended the hearing. After the hearing was concluded, your office (through Ms. Nell Minow) expressed an interest in reviewing and commenting on the Government's post-hearing brief. David W. Pelkey, Esq., Assistant General Counsel, Claims and Litigation Division, did not feel that a review by EPA attorneys was necessary in light of the fact that no EPA attorneys attended or participated in the hearing, and that GSA trial counsel were the counsel of record before the Board. EPA attorneys then informed attorneys of the Claims and Litigation Division that they wished to submit a brief amicus curiae. We advised them that the Board's Rules did not provide for the filing of such a brief and that they should first seek permission from the Board of Contract Appeals to do so. It was also agreed that EPA attorneys would let trial counsel review the amicus curiae brief so that any conflict in the positions of our respective agencies, could be resolved prior to the filing of that brief.

On December 1, 1978, your office filed an amicus curiae brief without first seeking permission from the Board of Contract Appeals and without first coordinating with attorneys from our Claims and Litigation

Division. Our attorneys were also advised that your office seeks to introduce into the record a transcript of an interview of EPA's Deputy Administrator by a reporter of WJLA (News Seven) Television (Attachment No. 1). The amicus curiae brief (Attachment No. 2) was written from the transcripts and documents provided by our Claims and Litigation Division. Counsel for appellant has filed an opposition to the brief and it appears that the objections set forth therein are well founded. (Attachment No. 3). The amicus curiae brief essentially summarized the record already before the Board, and did not present a unique or otherwise unavailable perspective to the case. In fact, GSA trial counsel presented as a witness at hearing the president of EPA's employees' union, who forcefully expressed the desire and need of EPA employees for a cafeteria. Since the evidentiary record in this appeal has been closed since July 1978, we do not believe it is appropriate to add materials into the record the substance of which have been fully explored at hearing.

For the foregoing reasons, I have called and discussed with your assistant on December 26, 1978, the possibility of your withdrawing the amicus curiae brief filed and I would urge you to reconsider EPA's position of directly participating in the litigation process of the appeal at this late date. The attorneys in the Claims and Litigation Division of the Office of General Counsel of GSA will continue to effectively represent the Government in this case.

For your information, a copy of the brief filed by attorneys from the Claims and Litigation Division is enclosed (Attachment No. 4).

Sincerely,

Allie B. Latimer

ALLIE B. LATIMER
General Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Insert 2B-1

JAN 16 1979

Ms. Allie B. Latimer
General Counsel
General Services Administration
Washington, D. C. 20405

Dear Ms. Latimer:

I was frankly very surprised by your letter of December 27, 1978, stating that we filed an amicus curiae brief without first seeking permission from the Board of Contract Appeals and without coordinating with attorneys from your Claims and Litigation Division.

To the contrary and as you pointed out, attorneys from your Claims and Litigation Division worked with Jim Nelson, of my office, who supplied them with factual data as they prepared for the hearing. After the hearing was concluded, Richard Boehlert spoke with Leonard Suchanek about having our office submit an amicus curiae brief. Mr. Suchanek told Mr. Boehlert that he welcomed our participation and encouraged us to prepare the brief. At first, David Pelkey advised against our getting involved but changed his mind after he was told of Mr. Suchanek's enthusiastic approval. Your office sent us a transcript of the hearing and copies of all of the exhibits to aid in the preparation of our brief.

Therefore, it's hard to understand your conclusion that we acted contrary to your office's policy in filing the motion to submit the amicus curiae brief and the brief. In any event, I still think that the points made by the brief will be of value to the Board in deciding this appeal, and that the decision as to the admissibility of the brief must be made by the Board.

Sincerely,

Joan Z. Bernstein
General Counsel

CONCURRENCES

MBOL	1-16-79						
RNAME	Bernstein						
ATE	OGC						

A Form 1320-1 (12-70)

A-126.

OFFICIAL FILE COPY

Mr. LEVITAS. Do you have any idea why GSA would not want all the help they could get in winning the case?

Ms. MINOW. Well, speaking as a former member of an Office of General Counsel myself, I suspect that there was some concern that we would weaken their case in some way, but the fact that I worked with the attorneys who are preparing the case, should have reassured them that we would not do that.

There was one other problem that we had with the Office of General Counsel at GSA. The same day that the briefs were due—there was simultaneous filing of briefs—by coincidence, the landlord, Mr. Bresler, was interviewed on a local television news program, and there were some statements made in that program which we felt were very supportive of our position on the case.

We secured a transcript of the news program and we asked GSA counsel to attempt to put it into the record. They would not do that, and they were never able to explain why. We attempted to put it in the record, and the Board would not allow us to because they said that amicus counsel were not permitted to introduce evidence.

Mr. LEVITAS. I want to go back a little bit, Mr. Tarran, Mr. Hanley. Maybe either of you can answer this. The testimony that we heard from GSA's Inspector General and General Accounting Office indicated that between the spring of 1972 and sometime in 1975–76, which was a long period of time, according to what they were able to document there was not a lot of activity by EPA to pressure GSA for the cafeteria.

Could you elaborate on that or enlighten me a little bit?

Mr. HANLEY. I guess it depends on the period of time, Mr. Chairman. Of course, there was a letter sent by one of my predecessors on October 1, 1975, asking GSA to pursue the matter, and explore—apparently someone had raised at that time questions concerning whether the urban renewal plan for that area would permit the cafeteria, and Mr. Rhodes had urged GSA to pursue the matter.

There were other contacts made in 1976 when the Administrator of EPA met with the Administrator of GSA and raised the issue.

Mr. LEVITAS. What was that timeframe?

Mr. HANLEY. January 9, 1976.

Mr. LEVITAS. But I would like to go back between 1972 and 1976, where the previous witnesses testified that they couldn't find any evidence of much activity by EPA saying, "Where is our cafeteria?"

Mr. HANLEY. I don't have a record of any activity in that period of time except the October 1, 1975 letter to GSA. I was not with the Agency at that time. Jack?

Mr. TARRAN. The only ones that I know of, and again, that was before my time, is that we did dig into the records, our files, and there was a letter in March 1973, requesting GSA to make available to our employees hot food and sandwiches through some sort of a facility operated by the blind.

December 1972 is the last time our records indicated that we had actively reminded GSA that there were no eating facilities and we were still waiting.

Mr. LEVITAS. That was in December of?

Mr. TARRAN. December 12, 1972.

Mr. LEVITAS. So between December 12, 1972, and sometime in January 1976——

Mr. HANLEY. October 1975.

Mr. LEVITAS. October 1975 is when EPA again became aggressive in trying to get something done about it?

Mr. HANLEY. Apparently.

Mr. LEVITAS. What was that October 1975 event, what happened?

Mr. HANLEY. A letter went from the Deputy Assistant Administrator for Administration, Mr. Edward Rhodes, to GSA asking their cooperation in determining the feasibility of establishing a cafeteria and examining a series of issues related to that, whether the urban renewal plan would permit it, whether the landlord was willing and/or legally bound to provide it, and whether our pattern of occupancy under GSA guidelines would justify a cafeteria.

Mr. LEVITAS. Ms. Minow, you are obviously familiar with the decision of the Board of Contract Appeals at GSA, and you obviously disagree with the outcome of that; is that correct?

Ms. MINOW. That is correct.

Mr. LEVITAS. Did you feel that GSA should have appealed from that decision?

Ms. MINOW. Yes, I do.

Mr. LEVITAS. Do you know why they didn't?

Ms. MINOW. I frankly can't understand why they didn't, because they had nothing to lose. We couldn't have a decision that was worse than the one we got. I don't think that, given the GSA counsels' familiarity with the record, it would have been tremendously burdensome for them to prepare some kind of motion for reconsideration. I also believe that the decision sets a very bad precedent for GSA's operation.

I would have thought they would have been very interested in trying to get it reversed.

Mr. LEVITAS. What type of implications are you talking about?

Ms. MINOW. Well, first of all, there is an implication in the decision that GSA should permit agencies to withhold rents during a dispute. I understand that that is contrary to policies of the GSA, and that EPA had asked GSA to do so and had been refused. More important than that, I am very disturbed by the notion that even a 4-year gap can cause a permanent waiver of a contractual right, and I am also disturbed by the decision which I believe to be incorrect as a matter of law.

In essence, courts have been very reluctant to apply equitable remedies against the Government. The one equitable principle that I do remember from law school is "He who comes to equity must come with clean hands." I think it is quite clear from the record, and even explicitly stated in the decision, that the landlord did not have clean hands, that he did not behave in good faith, and that nevertheless, GSA, and more particularly, EPA, were made to suffer.

Mr. LEVITAS. I used to be a lawyer and law has changed and principles are appealed, but not only does the person who seeks equity have to do equity and come with clean hands, but there is also a principle, as I remember it, that says estoppel doesn't run against the state. You can't have estoppel.

Ms. MINOW. That is what I referred to when I said it is very, very rarely applied. An extremely stringent test is used, and essentially there are a series of elements which must be proven in order to estop the state. One of them is detrimental reliance which is not present here, and another one is good faith which is not present here.

Mr. LEVITAS. Yes. It is pretty clear that the landlord did not suffer any detriment by his failure to do what he contracted to do, I would think.

Ms. MINOW. I agree. I think that is a very important point.

Mr. LEVITAS. Mr. Hanley, EPA's testimony is very critical of GSA's handling of this matter. I would say that it is impressive to see this sort of a candid interagency squabble going on. You say you believe the Inspector General's report was woefully inaccurate, that it goes over both the question of GSA's gross neglect and possible misconduct on the issues of management, malfeasance, and blames the problem on organizational changes and confusion.

I think you may have understated the GSA situation somewhat, but my question is this: I know you have worked with this problem for some while. Can you help me understand why GSA, which is the U.S. Government and interested in this matter, seems as you have described it and I have described it, to at best be Milquetoast in its attitude toward enforcing the provision?

They were making more of the arguments on behalf of the landlord than one would have expected. Do you have any explanation for that?

Mr. HANLEY. I guess I have to, in trying to respond to that, distinguish between—in saying this I hope this doesn't reduce your feelings about our candor—I have to distinguish between GSA as an institution and the people that we work with.

We have worked very hard and well with a number of people in GSA, on a lot of these issues, and they seem as individuals to be as concerned as we.

I can't explain to anybody's satisfaction, nor have my colleagues in GSA been able to explain to me to their satisfaction, why it turns out that with something which seems to be in the best interests of the Government, we can't act to get these things fixed.

I was thinking as I listened to Ms. Minow explain the legal principles of how this affects, for example, me and Jack and the people who work in GSA concerning other problems we have at the facility. I am beginning to wonder if, for example, our failure to write lots of memos and do more visible things about such things as a leaky roof, which I know the Congressman has seen in the past, has meant that somehow we have now waived our right to having a roof that doesn't leak.

GSA has made representations to the landlord informally, I don't know about correspondence, in meetings that we have had on the problems of this kind, the roof and many others. They aren't fixed. I don't understand legally and practically why the Government seems to be unable to act in its own best interests.

It comes to mind that in times past I have been a businessman, and I know that on properties that I owned I would behave very differently.

Mr. LEVITAS. I am glad you mentioned that point, because my feeling is that if any large commercial operation in this country had a property manager who did what GSA did, or somebody at GSA did or some group of people at GSA did, in losing a valuable property right, the persons responsible for it would be fired.

Here even with the Board of Contract Appeals decision that the contract gave the Federal Government this right, and that somebody or some group of people lost it or waived it—and I would imagine it is an extremely valuable property right—as I said in my opening statement, everybody says, well, that is too bad. Let's go on to the next problem.

Somebody must be accountable for doing that. I think if it is the events that occurred in February to April 1972, or whether it was somebody's nonaction from 1972 to 1975, whatever it is, somebody should be held accountable, I would think.

Mr. McEwen.

Mr. MCEWEN. Mr. Chairman, the only thing I would add is just my expressions of support for your observations and conclusions. I have had only limited encounters with GSA. Their timeframes are totally different from those of anyone else that I ever encountered in my life.

We only have 2-year terms as Members of Congress, and yet when we call to say, "I would like to have a desk put in my district office," they say, "We will get back to you in 6 months." I fail to understand why it is that what GSA does in all of our congressional encounters seem to be totally mismanaged, or indicates lack of management or just lack of concern.

We are approaching the halfway point and I would like to have in my district a chair and a desk. I don't think that is impossible. I understand they have got boxes of them stored all over the country. If they cannot come up with a desk for a Member, then I am not at all surprised that reading a contract and enforcing it would be outside the realm of possibility.

That is all I would add.

Mr. LEVITAS. Thank you very much for your contribution on that, Mr. McEwen. Tomorrow we will be hearing from GSA witnesses on this matter, and maybe we can get some enlightenment.

I think perhaps it would be helpful if, Mr. Hanley, you would just describe for the record, so that it will be here, what you think the impact is of the tangible losses you describe, to the Federal Government and to EPA, as a result of the lack of the cafeteria.

Mr. HANLEY. We have taken several different approaches to try and calculate that, and I am not sure which, if any, of them are legally supportable. We have at various times throughout, I think, provided to committee staff calculations of lost time and the value of that time that are as high as, I think, $100,000 per month.

I am not sure what the rules of law call for in calculating this. It seems to me in the approach that we are taking now in our discussions with GSA that the issue is rather than the loss in terms of employee time, the question is instead what is the value of the property, the goods, services, et cetera, that we have in fact received from Town Center management as opposed to those which the lease required we receive.

We haven't had the use of the services that the cafeteria was to provide to us. Someone else has had it. I don't know the market, and whether you could say that that space has been leased to some other commercial user, and that, therefore, the landlord has received funds for it, and that that establishes its true value of that service.

It seems to me clear that had the Government been negotiating for space without a cafeteria, we would have attempted to negotiate a lower lease payment. We settled on a lease payments, we, GSA on behalf of the Government, on the assumption explicitly stated in the lease that we were going to receive certain goods and services. We haven't gotten them.

We paid for things we haven't received, and it seems to me that that is how the Government ought to approach getting restitution.

Mr. Levitas. I don't want to destroy the suspense and impact of what GSA is going to say about this, but they have a very novel theory, that even if the contract were breached, there was no damage to the Federal Government.

You will hear it tomorrow, unless they have changed their minds since they last explained it to me. It is really a fascinating theory, that it really would be a washout, and, therefore, there would be no loss to the Federal Government.

Has EPA made any effort to ascertain from its employees whether they would patronize the cafeteria if it were provided, or are we just arguing about something theoretical here?

Mr. Tarran. Not formally.

Mr. Hanley. No formal and recent survey has been conducted, except a study was performed by GSA's group, the group within GSA that is responsible for determining whether a Government-supported cafeteria should be provided.

The results of that study, we have not seen the analysis, but the results were that we do not need a cafeteria.

Mr. Levitas. That is what GSA determined?

Mr. Hanley. Yes.

Mr. Levitas. That you didn't need a cafeteria?

Mr. Hanley. That is making reference to a set of guidelines and policies they have concerning how you determine that. I don't and have not been able to determine the method they used. I know what the answer was.

Mr. Levitas. Again, Ms. Minow or any of the others, do you know of any reason given by GSA for not appealing or asking for reconsideration of the Board's position on the matter?

Ms. Minow. No.

Mr. Levitas. I will tell you one thing I heard. They may say it again tomorrow when they testify. That if the Government came in now and built a cafeteria, or if the landlord built the cafeteria as they contracted to do, it would have an adverse effect on the businesses that have subsequently moved into the mall, many of which have minority business ownership.

It would work against the minority business policies. Also I think there is a stand run by the blind, and business would be taken away from the person who runs that food stand. I have heard that. I am not making this up.

Ms. MINOW. I would like to respond to that. That claim is speculative and beside the point. Even if it were true, it would only be true because a cafeteria would provide a healthier, higher quality environment for our employees to eat. We would still consider that to be a net benefit. Some of the operations which would be competing with the cafeteria are owned by minorities, and, of course, we have the blind stands operating in the building also. That does not mean that the cafeteria facility, which I presume would be subcontracted by the landlord, could not be operated by minorities or the handicapped as well. Thus there is no evidence that a cafeteria would adversely affect minorities or the handicapped. But that is not the point of our discussion today.

GSA may testify tomorrow that there has been no damage. They may testify that there is no need for a cafeteria at EPA, or they may even testify that a cafeteria would be bad for EPA. The important point, which Mr. Hanley just made, is that the lease payment was negotiated with this requirement in mind, and, therefore, we have been paying for something for 11 years—the taxpayers have been paying for something for 11 years—that they do not have.

Whether a cafeteria is built or not is the not issue right now. The issue is whether we are going to continue this overpayment for the duration of the lease, which goes to 1991.

Mr. HANLEY. I would if I may, Mr. Chairman, add also, that none of the GSA executives that we have dealt with about this or any other services have ever said that to me.

However, it is probably worth pointing out two things: First, that seems to me on its face to be a silly argument; and, second, if one were to engage on the issue at that level, I would point out that the employees of EPA most disadvantaged by the absence of adequate and reasonably priced food services are, of course, the low paid, the lowest paid clerical employees, who are predominantly women and minorities, so I think that illustrates not that we care more about women and minorities than GSA or someone else, but rather that once you descend into that sort of argument, it is uncertain where it leads you.

Mr. LEVITAS. In the Inspector General's report, which I requested, they state that a person at EPA, Mr. Messner——

Mr. HANLEY. Howard Messner.

Mr. LEVITAS. What was his position in 1972?

Mr. HANLEY. He was the Deputy Assistant Administrator for Administration.

Mr. LEVITAS. Is he still in the Federal Government?

Mr. HANLEY. Yes.

Mr. LEVITAS. At OMB?

Mr. HANLEY. He is at OMB—Associate Director, something on that order.

Mr. LEVITAS. The IG's report says on July 31, 1972, Mr. Messner wrote the Assistant Commisssioner at GSA emphasizing the inadequacy of the food facilities in the mall, and the lessor's apparent inability to meet the dates given at a May 25, 1972, meeting for the opening of several food facilities.

Mr. Messner's letter contained the following statement: "The lack of definitive information on food facilities and little or no construction progress makes it necessary to request that GSA take action to implement paragraph 10(a) of Schedule B, part III of the solicitation for offer dated January 19, 1971"—that is the cafeteria provision—"regarding a cafeteria to be provided by the lessor at Waterside Mall."

Then the IG says this: "The tenor of this letter reinforces the position that EPA as well as GSA was willing to accept adequate alternative private food facilities in lieu of a cafeteria."

They go on to say that it used the lease requirement as a lever to attempt to force the lessor to expedite the opening of the alternative private food establishment.

Mr. Hanley. I have had a brief discussion with Mr. Messner about the general issue. I don't know what the record shows that might support or disagree with this, but Howard Messner told me that letter was the upshot of a process in which he had held discussions with GSA, or possibly his staff had, concerning a lack of the cafeteria.

The landlord, in the course of these discussions had, as has been testified to earlier, raised the issue of the commercial food services becoming available. GSA had then come back to EPA and said, "Well, what do you think of that?" And in an effort to be reasonable, Howard said, "Well, I don't know, I will look at it," and very quickly turned around and said, "I don't think much of it at all."

So I think to take that letter out of context and say that that meant that GSA and EPA were giving serious consideration to accepting commercial food services in lieu of the cafeteria does not square with the recollection of at least one principal.

Rather, it was simply that something was thrown up in the discussions, and rather than just responding out of hand he said, "We will look at it," and immediately came back and said, "No sale."

Mr. Levitas. I have no further questions at this time.

Mr. McEwen.

Mr. McEwen. Thank you very much. We appreciate your participation and contribution.

Ms. Minow. Thank you.

Mr. Levitas. I hope at some time we may get to the bottom of this.

The next witness is Mr. Harold L. Dodson, who is representative of the Employees Union, Local 3331, AFL-CIO.

Mr. Dodson, raise your right hand.

Do you solemnly swear the testimony you will give today before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Dodson. I do, sir.

Mr. Levitas. Please take a seat, Mr. Dodson.

I know you have a statement to give to the subcommittee, and you are recognized for that purpose.

TESTIMONY OF HAROLD L. DODSON, PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES NATIONAL COUNCIL AT EPA AND LOCAL 3331 AT EPA HEADQUARTERS

Mr. Dodson. Mr. Chairman, I submitted a written statement, and rather than go into great detail in the written statement, I highlighted certain parts of that, and indicated that I would discuss these in detail before the subcommittee, and so with your permission I would like to enter my statement in the record and discuss the highlights.

Mr. LEVITAS. Without objection, your full statement will be made part of the record.

[The statement of Mr. Dodson follows:]

american federation of government employees

United States
Environmental Protection
Agency
Local 3331

Harold Dodson/President
14802 Curlbern Drive
Centreville, Virginia 22020

September 15, 1981

STATEMENT OF

HAROLD L. DODSON

PRESIDENT, AMERICAN FEDERATION OF

GOVERNMENT EMPLOYEES NATIONAL COUNCIL

AT EPA AND LOCAL 3331 AT EPA HEADQUARTERS

IN WASHINGTON, D. C.

Mr. Chairmen, and Members of the House Subcommittee on Investigations, thank you for this apportunity to discuss with you two major problem areas faced by employees in the EPA Waterside Mall headquarters. These are; a lack of an employees cafeteria, or as it is commonly known, the Case of the Missing Cafeteria, and secondly, health and saftey of employees.

My name is Harold L. Dodson and I am the President of the American Federation of Government Employees Local 3331 at EPA headquarters. AFGE is affilated with the AFL-CIO.

Local 3331 represents approximately 2000 of the 2500 to 3000 employees located at the Waterside Mall complex. This complex is located in Southwest Washington between M Street on the South, I Street on the North, 6th Street on the West, and 3rd Street on the East. Three sides of our complex are adjacent to moderate to high priced apartments and townhouses while the fourth side, 3rd Street, is adjacent to low income apartment rows.

This, then, sets the scene for the two problem areas which I shall discuss with you. My written statement will not dwell upon the details of these problems, it will consist of highlights of each problem area. I will go into more detail in my oral testimony, filling in the spaces between the lines.

THE CASE OF THE MISSING CAFETERIA

- Contractural requirement for an employee's cafeteria uncovered and published in the Federal Times by freelance reporter Dave Rothman. Date of this first article was the September 3, 1975 issue and I have attached a copy of this article as Attachment A.

- Local 3331 (Union) started working with Mr. Rothman and agreed to determine employee interest and concern through an employee survey. (Attachment B)

- The Union conducted a survey of EPA headquarters employees in Waterside Mall through an October 10, 1975 and prepared an analysis of the results. See

Attachment C. In 1975 EPA employees believed that the fast food prices were too high, that they needed and would use the cafeteria they had been denied, and they were not satisfied with the quality and availability of the existing food service.

- o Survey results were presented to the EPA Administrator, and to Congressman Charles Rose (N.C.).
- o The missing cafeteria issue was pursued by the news media and Congressman Rose through GAO investigations.
- o Agency officials started working with the Union after a two year period of inactivity.
- o General Accounting Office reports that the cafeteria was still a legal part of the lease agreement. See Attachment D.
- o GSA orders landlord to comply with the cafeteria terms of the agreement. (Attachment E)
- o Landlord appeals to GSA Contract Appeals Board and a hearing was held in the summer of 1979.
- o GSA Administrative Law Judge rules almost 18 months later that the landlord is free of the contractural requirements for an EPA cafeteria in its Waterside Mall complex.
- o Another employee survey conducted in May 1981 shows little change in employee responses. Ninety four percent of those responding are not satisfied with the present quality and availability of food service while 84 percent think that the fast food prices are too high. One hundred percent believe that they would benefit from a cafeteria. See Attachment F.

HEALTH AND SAFTEY PROBLEMS

I will briefly describe the problems which EPA headquarters employees at the Waterside Mall complex have faced since moving into this complex. First, there is the danger of physical assault just outside the office spaces. Employees have been mugged in the elevators, in the garage, walking from the elevator to the commercial area, and rocked in front of the building on the I Street side. We have had armed robberies, attempted rape, many purse snatchings, and severe beatings. This led to the security which presently exists, a contract guard at each and every entrance to the office space. It was even found necessary to arm these guards until some of them shot themselves and others shot fellow guards. Now, only certain guards carry guns.

The metropolitan police have increased their patrols in the area, the commercial business has also hired contract guard service. A security guard is stationed at the corner of I and 4th Streets during school hours to protect the EPA employees more so than to act as a crossing guard for the elementary school children who go to school at this corner location.

We have had bomb threats, too many false alarms from the fire alarm system to count. These are usually considered the acts of the school children as they are leaving school during lunch and in the afternoon.

The inside office space is not much better. Employees have faced a constant horde of insects and rodents. Because the space is extremely crowded and not adequately equiped for the normal office use there has been a constant fire and saftey hazard problem. Employees have used electrical extension cords in such ways as to cause fire and saftey hazards, equipment has been located and stored in such manner that employees saftey has and is threatened.

There have been reports by GAO listing the fire and saftey problems and recommending solutions. EPA has conducted numerous fire and saftey inspections whereby many violations have been uncovered, yet, many remain uncorrected. AFGE Local 3331 suggests that the Committee ask EPA's Occupational and Saftey Office to describe these health and saftey problems in detail. That is the responsible office in EPA.

Mr. Chairman, that concludes my testimony and I thank you, again, for this opportunity to address some of the problems which the EPA employees have, and continue to face while working in the Waterside Mall complex. I will be happy to answer any questions which you may have.

Attachment A

FEDERAL TIMES

Vol.11,No.26 · SEPTEMBER 3, 1975 50 Cent·

Waterside, NOT Watergate

Case of the Missing Cafeteria

By DAVID H. ROTHMAN

Special to Federal Times

WASHINGTON — One of our cafeterias is missing.

The Case of the Missing Cafeteria, a $500,000 real-life mystery co-starring Uncle Sam and a friend of former Vice President Spiro T. Agnew, began in 1971.

Agnew friend Charles S. Bresler agreed to lease office space to the government. Under the lease, he promised that he would give federal workers a cafeteria — reportedly worth at least $500,000.

The cafeteria, however, never appeared. And government officials won't say who released Bresler from this legal obligation without the taxpayers getting a penny's worth of rent reduction.

The $500,000 cafeteria would have been installed at the headquarters of the Environmental Protection Agency at Waterside Mall in Southwest Washington's urban renewal project.

And questions also have arisen about how that lease was awarded in the first place.

The lease involved here is a big one: More than 450,800 square feet. The government is paying at least $45 million altogether over 20 years to rent twin 130-foot office towers and other space.

The General Services Administration awarded the huge lease to companies run and partly owned by Bresler.

The FBI is investigating the GSA's leasing program, though not necessarily Bresler's Waterside Mall lease.

An FBI spokesman refused to confirm or deny that Bresler is or has been under investigation. The spokesman said that that response does not reflect guilt or innocence.

Similar words came from the U.S. District Attorney's office in Baltimore, whose investigations led to Agnew's resignation.

Agnew and associates have been accused of channeling government contracts to political favorites.

While Agnew was governor of Maryland, Bresler — once a state legislator — was the state's federal-state relations coordinator. Bresler was assistant chief of staff of Agnew's 1968 vice presidential campaign and Bresler and his wife gave at least $4000 to the 1972 Nixon-Agnew campaign.

In an interview, Bresler said that:

- Federal officials investigating Agnew didn't find anything against Bresler despite searches of his files.
- He dealt with the federal government long before Agnew reached the White House.
- He himself exposed corruption in Maryland politics, including questionable state leases on private office buildings.

"Listen," Bresler said, "I broke open maybe $20 million worth of the same thing you're trying to do, at the state level. ... If I wanted to go out and flim flam, I could show you eight ways to do it. I've watched the masters do it."

Bresler denied any knowledge of wrongdoing in the Waterside Mall lease.

However, two independent sources — both well informed about GSA and its cafeteria requirements — have individually raised serious questions.

Bresler broke out of the cafeteria commitment even though he had formally agreed to it by offering his signature to concur with the lease's acceptance letter, one source noted.

This letter from the General Services Administration, dated February 19, 1971, could not have been clearer. "A cafeteria will be placed in operation on a phased basis concurrently with the delivery of the Waterside Mall West Office space . . ."

Asked how he had gotten by with not including a cafeteria, Bresler told *Federal Times* that he had responded to a lease solicitation which did not require one.

But a form from him, dated January 27, 1971, offering Waterside for lease, shows that he responded to General Lease Specifications and Requirements No. 55.

And No. 55 called for a cafeteria — even to the point of specifying the size of the facility. No 55, a legal part of the lease, said the landlord should furnish the cafeteria "at his expense."

In a letter accompanying the January 27 offer form, Bresler wrote that he would furnish the cafeteria "provided this does not increase lessor's cost as contained in the bid; if so it will be done on an actual cost basis plus ten percent representing overhead and ten percent representing contractor (lessor) profit."

However, in an amending letter, dated February 12, 1971, Bresler agreed to paragraph 10(a) of Schedule B, Part III of the solicitation, which required the cafeteria at the landlord's expense. Significantly, the government's acceptance letter made no mention of the government paying Bresler for a cafeteria.

A source who was with the leasing program at the time of the Waterside negotiations pointed out that it was highly unusual for the government to abandon a normal requirement such as a cafeteria without getting anything back in return (reduced rent, for instance).

In the case of the cafeteria at Waterside, the "trade-off" would have been big. Both of the independent sources agreed that a cafeteria would have cost hundreds of thousands of dollars to build and equip.

One source judged the cost at more than $500,000. And that excludes the value of the space the cafeteria would have taken up. Thousands of square feet.

Over the 20-year lease, the space, too, would have been worth at least half a million dollars, according to both sources, and normally the government wouldn't have been charged for it.

GSA officials acknowledged that the agency did not obtain a "trade-off" from Bresler. As of this writing, they refused to let *Federal Times* see any possible letters or memos authorizing the deletion of the cafeteria requirements.

The officials would not say who had approved the deletion, which, according to one of the sources, occurred over the objection of people in the leasing program.

GSA spokesmen pointed out, as did Bresler in a 1971 letter to GSA, that Waterside Mall had private eating places. Bresler said he felt that as a landlord he must protect existing tenants.

The July 1971 letter to GSA reported two eating facilities, and others planned.

However, Laszlo Bockh, president of Local 3331 of the American Federation of Government Employees, complains about the fast-food franchises at Waterside. He said it was hard to get complete meals at reasonable prices. When EPA moved into Waterside, Bockh said, "We petitioned . . . for a cafeteria and lunch room, but nothing got done."

So now Bockh brown-bags his lunch. Some other employees, he said, take the bus to the HUD cafeteria.

Additional questions have arisen in the lease: For example, whether GSA tried to stymie possible competition by not advertising the lease, sending out only two solicitations and restricting offers to Southwest Washington where Bresler hadn't any strong rivals.

In a letter to GSA dated December 23, 1970 — — weeks before GSA's restrictive solicitation went out on January 19, 1971 — EPA said its headquarters could be anywhere in the city within reasonable commuting distance of the executive offices. The executive offices are in Northwest Washington.

Significantly, when the lease was awarded, a GSA "Fact Sheet" made no mention whatsoever of a need to restrict competition to the Southwest. The "problem" mentioned on the sheet was simply to "provide space in Washington, D.C."

Asked to explain the Southwest restriction in the solicitation, GSA officials could offer no reason other than that the agency had made a market survey and found space only in Southwest Washington.

The officials said it was impossible to determine who did the market survey or who made the decision to restrict the competition to Southwest Washington.

Nor could the officials locate a copy of the market survey.

A leasing expert, one of the two independent sources suspicious of the lease, believes that this is a case of the tail — the market survey — wagging the dog — the solicitation.

The expert points out that solicitations are to be written as broadly as possible rather than to match up with any particular locations. The Code of Federal Regulations (41 CFR 101-18.100) offers this policy:

"In negotiating, competition will be obtained to the maximum extent practical among suitable available locations meeting minimum government requirements." As of this writing, GSA had no comment as to whether the agency awarded Bresler his lease in compliance with that part of the federal regulations.

The regulations' "suitable available locations" might be the key words here. A check with real estate experts revealed that in the period GSA was seeking space for EPA, there were indeed buildings outside Southwest Washington which might have met the solicitation's 400,000 square foot space requirements and other needs.

Inside Southwest Washington, GSA's Fact Sheet said, offers came from owners of two properties. One of them was Bresler's and the other was the L'Enfant Plaza complex.

Bresler offered space at $5.31 per square foot, a figure later negotiated slightly downward. L'Enfant Plaza offered room at $7.06 per square foot — from which the owners didn't budge.

One of the independent sources consulted here, someone with the leasing program at the time of negotiations with Bresler and L'Enfant Plaza, reported that the Plaza's offers on various leases were viewed at GSA as "jokes."

While not necessarily suggesting collusion, the source said GSA employees loved to receive L'Enfant Plaza's offers because the prices made rivals look good and it was easier to show that the rivals' winning bids gave the government the best buys.

GSA officials, despite a series of phone calls, were ignoring the following question: "Is GSA convinced — — and why — that L'Enfant Plaza West submitted a serious offer?"

Asked about the offer, H.A. Abserfeller, president of L'Enfant Plaza Properties Inc., at first said the complex's policy had always been never to lease to GSA. He denied that the Plaza had ever offered GSA space. Told that a copy of a GSA document saying that the Plaza had done exactly that had been obtained, Abserfeller then said he would furnish neither confirmation nor denial of an offer.

Abserfeller refused to say why the Plaza rented to individual government agencies (obtaining the space through their own direct negotiations rather than through GSA) but not to GSA in the agency's role as an agent.

During part of the 1960s, Abersfeller was GSA's regional administrator for the Washington region, but in an interview earlier this year he said fear of conflict of interest wasn't why the Plaza would not rent to GSA.

In the earlier interview, however, he mentioned other reasons, including that GSA "couldn't meet our rent roll because we don't have a speculative building."

Beyond the question of competition, or lack of it, Waterside has raised eyebrows. The lease, like many others, violated a General Accounting Office ruling that all federal contracts be drawn up in the names of principals. It also violated a requirement in the GSA leasing manual that partnerships leasing to the government list all their partners.

The lease is in the name of Town Center Management, which manages the Mall but isn't a true legal owner. The actual owners are Bresler & Reiner, Inc. (of which Town Center is a subsidiary) and the Trilon Plaza Company (a limited partnership).

Bresler says GSA, rather than he, attended to the legal details of listing ownership.

Informed that the lease went against the GAO ruling, GSA says it will correct the lease so that it will list all the principals, including all the partners of the Trilon Plaza Company.

The partners include not only Washington area investors but a slew of people from Pennsylvania. It is the home state of GSA administrator Arthur F. Sampson (commissioner of the Public Buildings Service at the time of the lease), his former subordinate Lawrence Roush (under Sampson in PBS at the time of the lease) and former Administrator Robert Kunzig (now a federal judge, but in GSA at the time of the lease).

Names of all three appear on a document authorizing the Waterside lease.

Despite persistent efforts, this reporter was not allowed to question Sampson about his role in the lease and any possible relationship with Bresler. The office of Roush — who has left GSA to become a private consultant — said he was on vacation and unavailable for comment.

Roush's office said he was unavailable, after being informed of the nature of the call and after talking with his former agency. At the U.S. Court of Claims, Judge Kunzig's office said he was vacationing out of the country.

Kunzig formerly worked as an aide to Sen. Hugh Scott, R-Pa., and the names of both of them have come up in connection with a controversial lease in Philadelphia on the Gateway Center building.

Scott has denied any wrongdoing in the Waterside and Gateway cases.

One of the prime movers behind the Gateway building was Matthew Weinstein, a board member of the now-defunct Gateway Insurance Co., whose president was a William Rush. Through the Trilon Plaza Company, Rush invested at least $100,000 in Bresler's Waterside Mall.

In an interview, Rush said that the existence of the Gateway building with a name like the insurance company was just a coincidence and that the two hadn't anything to do with each other. He denied any connection, political or otherwise, with Scott.

Earlier Rush, a Philadelphia area resident, was asked how he happened to hear of a chance to invest in Waterside. "You've got me wrong," he said. "I'm not one of the investors."

Reminded that partnership papers associated with Waterside list him, Rush said, "Oh, I've long since been out of that one. That was sold a long time ago." Later, in another phone interview, he said he checked and found he was still an investor.

Rush heard of the investment opportunity by way of Philadelphia lawyer S. Laurence Shaiman. Shaiman and Bresler say that they — Shaiman and Bresler — are related by way of family, though neither can recall the exact relationship. Bresler said Shaiman had been an attorney for him, an investor, and investors' representative in other Bresler projects.

In the case of Waterside Mall, Shaiman — who like Rush denies any political connections involving the lease — is an investor in the Trilon Plaza Company by way of a firm called Potomac Realty Investors. With a $1 million investment in Waterside, Potomac Realty, in turn, seems to be the largest investor, judging from the partnership papers.

Attachment B

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

LOCAL 3331

Dear EPA Employee:

Attached is a copy of an article appearing in the September 3, 1975 issue of the Federal Times. It should be of interest to all EPA Headquarters employees.

Numerous complaints have been expressed to your Union Officers indicating considerable dissatisfaction with the several fast food outlets in Waterside Mall and the difficulty experienced in trying to use shuttle bus service to HUD and/or DOT in the time allowed for lunch breaks.

Others have indicated a desire for an employee dining lounge equipped with milk, coffee, soft drink dispensers sufficiently large enough to accommodate those who "brown bag". This would help eliminate office deskside dining as well as the rodent and insect problems that result therefrom. Many would use it to break the office routine of an eight hour day.

To ascertain the level of employee interest in this matter I am attaching a questionnaire for you to express your interest in an EPA Employees Cafeteria and/or dining lounge. If there appears to be sufficient affirmative interest Local 3331 of AFGE will pursue the matter further with Agency Management.

The results of the survey will be announced to EPA employees and management. Signed questionnaires will be treated as strictly confidential information.

Please complete the form and return it to one of the designated persons by October 10, 1975.

Thank you,

Harold L. Dodson

Harold Dodson, President
Room #835 East Tower
Mail Code WH-453

Home Address
14802 Carbern Dr.
Centerville, Virginia 22020

Local 3331, American Federation of Government Employees

OPINION SURVEY OF EPA EMPLOYEES REGARDING FOOD SERVICE FACILITIES IN WATERSIDE MALL

1. Are you satisfied with the present quality and availability of food service within the Waterside Mall complex?

   ☐ yes ☐ no ☐ no opinion

2. On the average, how many days per week do you purchase your lunch from a food service establishment located within the Waterside Mall complex?

   ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5

3. Indicate your opinion concerning the prices you generally pay for lunch within the Mall:

   ☐ generally too high

   ☐ reasonably priced

   ☐ generally too low

4. On the average, how many times per week do you have lunch at a government agency cafeteria located in Southwest Washington?

   ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5

5. How much time do you believe is reasonably required, on the average, for you to have lunch at the HUD or DOT cafeterials, including the time required to travel there and back from Waterside Mall?

   ☐ 30 min. ☐ 45 min. ☐ 60 min.

6. Do you believe that you would benefit from the opening of an EPA employee cafeteria within the Waterside Mall complex?

   ☐ yes ☐ no ☐ no opinion

7. If the proposed cafeteria served a variety of nutritious, reasonably priced food, how many days per week would you have lunch there on the average?

   ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5

8. As an interim measure, do you favor the establishment of an EPA-employees lounge, adequately equipped with dining tables and vending machines, and serviced by an attendant, of a size sufficient to accomodate several hundred employees during the lunch hour?

☐ yes ☐ no ☐ no opinion

9. Do you believe that Local 3331 AFGE (the EPA employee's union) should investigate the questions and issues raised in the attached article and bring the matter to the attention of EPA Management?

☐ yes ☐ no ☐ no opinion

Comments and suggestions:

Employee Signature

Room Number

Thank you for helping us make EPA a better place to work.

Please answer the above questions, sign the form and return it in person to any of the following survey coordinators by October 10th.

WEST TOWER

Room 301	Charles D. Pierce
401	Marsha Jackson
511	Anne Williams
635	Deloris Cade
733	Joan Graham
735	Margaret Proctor
839	Diane Hicks
947A	William Ades
1003	Albert J. Brown
1145	Josephine FitzSimon
Printing & Supply	Roberta Miller

EAST TOWER

Room 124	Arthur Schlosser
218	Betty Bates
349	Ida Armstrong
539	Carrie Pope (Please Mail)
719	Barbara Douglass
835	Harold Dodson
1114	Ken Hay
1129A	Frank Lapense

MALL

2194	Stephen Barmakian
2821	Jeannie Brown
3105	John Ropes
3225H	Valerie Johnson
3632	Margaret Beason
3710	Michael Moore

ALL ENTRIES WILL BE KEPT STRICTLY CONFIDENTIAL!

Local 3331, American Federation of Government Employees

1018 Replies Tabulated (50% response)

OPINION SURVEY OF EPA EMPLOYEES REGARDING FOOD SERVICE FACILITIES
IN WATERSIDE MALL

No 95%

1. Are you satisfied with the present quality and availability of food service within the Waterside Mall complex?

25 ☐ yes 964 ☐ no 𝍸 𝍸 |||| 27 ☐ no opinion 2 No Answer

581 Daily Av.

2. On the average, how many days per week do you purchase your lunch from a food service establishment located within the Waterside Mall complex?

99	189 ||||	131	162 |	164 ||||	262 ||||	11
0	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	No Answer

3. Indicate your opinion concerning the prices you generally pay for lunch within the Mall:

88% ← 𝍸 𝍸 ||| ☐ generally too high 891

☐ reasonably priced 101

☐ generally too low

No answer 26+1

145 Daily Av.

4. On the average, how many times per week do you have lunch at a government agency cafeteria located in Southwest Washington?

448 𝍸 ||	257 ||	85 |||	33	31	15	149+11
0	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	No answer

81% ans. or more

5. How much time do you believe is reasonably required, on the average, for you to have lunch at the HUD or DOT cafeterials, including the time required to travel there and back from Waterside Mall?

3	64+1	822 || 𝍸 𝍸	125+1
☐ 30 min.	☐ 45 min.	☐ 60 min. or more	No Answer

97%

6. Do you believe that you would benefit from the opening of an EPA employee cafeteria within the Waterside Mall complex?

989+𝍸 𝍸 ||| ☐ yes 17 ☐ no 9+1 ☐ no opinion 3 No Answer

870 Daily Av.

7. If the proposed cafeteria served a variety of nutritious, reasonably priced food, how many days per week would you have lunch there on the average?

10	17	55 ||||	226 |	264 ||||	438 𝍸 |	8
0	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	No Answer

71%

8. As an interim measure, do you favor the establishment of an EPA-employees lounge, adequately equipped with dining tables and vending machines, and serviced by an attendant, of a size sufficient to accomodate several hundred employees during the lunch hour?

722 𝍸 𝍸 || ☐ yes 170 ☐ no |||+|| ☐ no opinion 15 No Answer

9. Do you believe that Local 3331 AFGE (the EPA employee's union) should investigate the questions and issues raised in the attached article and bring the matter to the attention of EPA Management?

88%

892 𝍸 𝍸 ||||| 21 ☐ yes ☐ no 86+1 ☐ no opinion 19 No Answer

Comments and suggestions:

Attachment C

LOCAL 3331, AFGE

RESULTS OF AN OPINION SURVEY OF EPA EMPLOYEES CONCERNING FOOD SERVICE FACILITIES WITHIN WATERSIDE MALL

Report Prepared by
Local 3331 American Federation of Government Employees
Harold Dodson, President

Purpose of the Survey

During the last two years officials of local 3331 have received numerous complaints from EPA Headquarters employees regarding the poor quality of food service available in Waterside Mall and especially regarding the total lack of any government or agency sponsored food service facilities for its employees. These complaints have become more frequent within recent months.

Concurrently, stories began to appear in the press about the Waterside Mall complex, including reports that the General Services Administration was not diligent in overseeing the implementation of its lease agreement with the Mall's owner and lessor, Bresler and Reiner, Inc.. A feature story in the Federal Times, dated September 3, 1975, disclosed that not only does the GSA lease clearly require the lessor to provide a major cafeteria facility, at his own expense, for EPA employees, but that the General Services Administration has been reluctant to make that fact public information, much less take serious measures to enforce the requirement.

Finally, there was no indication that EPA management was attempting to take any action, on behalf of its employees, to secure GSA's cooperation in enforcing the lease's cafeteria provisions.

For these reasons, Local 3331, AFGE conducted this survey and has reported its results to the Agency's top management. It is hoped that the results of this effort will be to secure Agency-management's active cooperation and support in obtaining a firm, public commitment from GSA that the cafeteria provisions in the lease, which are legally required, will be implemented without further delay.

Summary of Survey Results

A total of two-thousand questionnaires was distributed to EPA Headquarters employees during October 6 - 10 with instructions to return them completed and signed to designated survey coordinators by October 10, 1975. A total of 1018[1] signed questionnaires was received, for a response rate of 51%. The survey results disclosed that EPA employees

- are overwhelmingly dissatisfied with the quality and availability of food service within Waterside Mall
- believe that the prices they pay for lunch there are generally too high
- infrequently have lunch at a government cafeteria located in southwest Washington
- believe that one hour or more is reasonably required in order to have lunch at DOT or HUD, including travel time to and from Waterside Mall
- believe overwhelmingly that they would benefit from the opening of an employee cafeteria in Waterside Mall
- indicate that they would heavily patronize an employee cafeteria if it served a variety of nutritious, reasonably priced food
- support the establishment of an employees lounge as an interim measure
- believe that Local 3331, AFGE (the EPA employees' union) should investigate the issues raised in the press regarding the cafeteria provisions of the GSA lease and bring them to the attention of EPA management.

FOOTNOTE:

[1] An additional 18 were received after the deadline but are not included in the Summary.

Analysis of Responses

1. Are you satisfied with the present quality and availability of food service within the Waterside Mall complex?

Response	Frequency	Percent
Yes	25	2%
No	964	95%
No opinion	29	3%
Total	1018	100%

2. On the average, how many days per week to you purchase your lunch from a food service establishment located within the Waterside Mall complex?

Response	Frequency	Percent
None	99	10%
One	189	18%
Two	131	13%
Three	162	16%
Four	164	16%
Five	262	26%
No response	11	1%
Total	1018	100%

3. Indicate your opinion concerning the prices you generally pay for lunch within the Mall

Response	Frequency	Percent
Generally too high	891	88%
Reasonably priced	101	10%

Generally too low	0	
No response	26	2%
Total	1018	100%

4. On the average, how many days per week do you have lunch at a government agency cafeteria located in southwest Washington?

Response	Frequency	Percent
None	448	44%
One	257	25%
Two	85	8%
Three	33	3%
Four	31	3%
Five	15	2%
No response	149	15%
Total	1018	100%

5. How much time do you believe is reasonably required, on the average, for you to have lunch at the HUD or DOT cafeterias, including the time required to travel there and back from Waterside Mall?

Response	Frequency	Percent
30 minutes	3	0%
45 minutes	64	6%
60 minutes or more	822	81%
No response	129	13%
Total	1018	100%

6. Do you believe that you would benefit from the opening of an EPA employees cafeteria within the Waterside Mall complex?

Response	Frequency	Percent
Yes	989	97%
No	17	2%
No opinion	12	1%
Total	1018	100%

7. If the proposed cafeteria served a variety of nutritious, reasonably priced food, how many days per week would you have lunch there on the average?

Response	Frequency	Percent
None	10	1%
One	17	2%
Two	55	5%
Three	226	22%
Four	264	26%
Five	438	43%
No response	8	1%
Total	1018	100%

8. As an interim measure, do you favor the establishment of an EPA employees lounge, adequately equipped with dining tables and vending machines, and serviced by an attendant, of a size sufficient to accommodate several hundred employees during the lunch hour?

Response	Frequency	Percent
Yes	722	71%
No	170	17%
No opinion	126	12%
Total	1018	100%

9. Do you believe that Local 3331 AFGE (the EPA employees' union) should investigate the questions and issues raised in the attached article and bring the matter to the attention of EPA management?

Response	Frequency	Percent
Yes	892	88%
No	21	2%
No opinion	105	10%
Total	1018	100%

Quotable Comments

"60 minutes is the absolute minimum time required to eat a good balanced meal including travel time and the fact we only get 45 minutes for lunch discourages attempts to travel such distances except as an occasional treat or change of routine."

"It doesn't make sense that EPA has no cafeteria. Something needs to be done."

"Thank you for attempting to answer issues and questions that have bothered me quite a while. Good luck on finding the real answers."

"If we, as employees and as taxpayers, were supposed to have a cafeteria, then we damn well should have it!"

"There are certainly an adequate number of federal employees at the Waterside Mall complex to justify a government agency cafeteria and I believe one should be obtained."

"Every now and then I will go to one of the government cafeterias and it takes an hour if you rush."

"We need a cafeteria badly."

"Cafeteria facilities will enable people who have diets to follow to have a well balanced meal while at work."

"It seems highly desirable to have an EPA cafeteria comparable to other agencies where employees can eat quickly and economically."

"An adequate cafeteria and lounge area would appear to be almost a necessity, and it is a wonder that the present mixture of establishments has apparently satisfied the demands for this long. There must be a very larger 'silent majority' of dissatisfied people, who are content to let things go as they are."

"If the government can afford a $500,000 slip-up, they can afford to give us a decent place to eat."

"I am very much in favor of a cafeteria resembling the one located at HUD."

"I believe a cafeteria is badly needed, particularly for clerical and secretarial personnel who cannot afford to eat in restaurants and specialty food establishments every day."

"About time somebody brought this up! Go! Go! Go!"

"If EPA intends to remain in Waterside Mall, we should be allowed to have a GSI cafeteria."

"Somebody's getting ripped-off; most likely the taxpayers!!"

"We are operating on strictly limited personnel in our office and it is frustrating to be kept waiting so long for service... Whereas in a cafeteria the line usually moves swiftly."

"It would be much more economical to have a cafeteria along the lines as the ones run by GSI in other government buildings. And the prices are not bad either."

"There is no place within Waterside Mall where an EPA employee on a weight control diet can buy and eat a balanced and nutritious low-calory lunch."

"EPA Management should have been at work on this all ready."

"Long over due."

"A cafeteria that serves breakfast from 8 to 10:30 and lunches from 11:30 to 2:30 would be ideal - as fresh food could be served daily and food inspectors could check more efficiently."

"We should push for a cafeteria. If we sought a lounge, that would delay getting the cafeteria."

"EPA Management is aware of the eating establishments available to EPA employees, but do they want to do anything about it?"

"A good job--."

"I definitely think a cafeteria would be a great thing - if not an employee lounge is a must."

"Most of the food services in the Mall are too much alike, inadequate variety and inadequate nutritional value."

"It generally takes more than 60 minutes to travel to and from HUD, etc., considering time for walking to and from bus stop, the actual ride, standing in cafeteria lines, and eating at a comfortable pace."

"I would like a cafeteria with hot meals. I am tired of sandwiches every day."

"We need less Bread, Salt, Grease and Sugar for people who must diet and more access to low cost, nutritious, hot food."

"I think a cafeteria would benefit the employee more so than a lounge."

"EPA employees should not be forced into overpriced nutritionally deficient lunches because of power politics."

"Because traveling to HUD and DOT and back takes up quite a bit of your lunch hour, one really can't take time to enjoy lunch."

"The fast food stores on the Mall are good, reasonably priced fast-food stores. There is no place, however, around the Mall where an employee can buy a more substantial meal at a reasonable price."

"We should have our own cafeteria not only from a convenience standpoint, but from a *health* standpoint."

"It's about time something was done about a cafeteria. It is awful to have to brown bag it day after day or buy a sandwich for $1.88 day after day. A nice hot lunch (dinner) with meats, vegetables, bread and milk make the day a lot better."

"A cafeteria would be able to supply a 'well balanced' lunch which is currently lacking from the other services located at Waterside Mall."

"It certainly would be nice to have a cafeteria here at the Mall."

"I feel that a cafeteria would be beneficial to all employees...I am completely in favor of it."

"EPA *urgently* needs sufficient reasonably priced, eating facilities in the Waterside Mall complex."

"I believe EPA Management should consider this problem."

"Thanks for caring."

"The food in Waterside Mall is not only too high, but it is of poor quality. Too much time is required to eat at other government cafeterias."

"Keep up the good work."

Conclusions

The survey results indicate that an EPA employees' cafeteria, serving nutritious and reasonably priced food, would be heavily patronized. Ninety eight percent of the 1018 employees responding to the survey indicate that they would have lunch at such a cafeteria at least one day per week. However, the average respondent indicated that he would consume 3.97 lunches per week, bringing the total number of lunches consumed by the 1018 respondents to 4051 lunches per week. Assuming that the other 2,000 EPA Headquarters employees who did not respond consumed only one-half as many lunches weekly as the group that did respond, the total number of lunches which would be served weekly would exceed 8,000. To this should be added at least several thousand additional meals served to employees from other nearby government agencies and persons visiting the Agency. The total number of lunches served weekly by such a cafeteria would probably exceed 10,000, a level of demand more than sufficient to support a cafeteria operation on the scale required by the GSA lease.

There is clearly a need for an employees cafeteria in EPA Headquarters, which presently has over 3,000 employees. The nearest cafeteria which serves nutritionally balanced meals, at reasonable prices, is the cafeteria located in the HUD building at least 15 minutes walk from Waterside Mall. Because the EPA shuttle bus to HUD was discontinued two years ago, employees must now either walk, or ride the Metro Shoppers Bus at a roundtrip cost of 50¢. Due to the time and/or cost involved in traveling to and from the government agency cafeterias located in southwest Washington, EPA employees normally find it necessary to have lunch at one of the food establishments in Waterside Mall, even though they are overwhelmingly dissatisfied with the quality and availability of such food service and believe that the prices that they pay for such food service are generally too high. Clearly, EPA Headquarters employees constitute a captive market for the food establishments in Waterside Mall.

The Agency itself recognizes the importance of nutrition and weight control through proper dieting. The Agency's own Health Unit offers a free cholestrol screening program, exhibits films on dieting and weight control (shown at noontime), and distributes literature on dieting and nutrition to employees on request. If all Headquarters employees were to participate actively in the Agency's cholestrol control program and adhere strictly to the dietary recommendations of the Health Unit, most employees would either have to "brown bag" their lunch (at their desk) or go hungry, because nutritionally balanced lunches at reasonable prices are not now available from the commercial establishments in Waterside Mall.

The Agency's failure merely to bring the cafeteria issue to the attention of GSA raises the question of whether or not the Agency is really serious about its own employee-dieting and weight control program.

If the Agency is serious about its program of cholestrol and weight control, and other health programs of which dieting is an important aspect, why hasn't it taken action to insure that its employees have a cafeteria, as required in the lease? Is the Agency suggesting, by its inaction, that the food which employees consume at home has at least as much cholestrol and caloric content, and is as nutritionally deficient, as the typical fare served in the Waterside Mall food establishments?

It is common knowledge that the morale of EPA employees is at an all-time low. The causes of low morale within the Agency are numerous and complex, and to a great extent have their origins in political, administrative, and economic events and processes over which EPA management has little or no control.

However, EPA top management must bear some of the responsibility for the morale problem. When, as the result of accumulated experiences and observations of management inaction on fairly commonplace problems, employees reluctantly conclude that management is basically indifferent toward their welfare as a group, despite reassuring statements to the contrary, and there inevitably develops a morale problem.

The cafeteria issue is a prime example of EPA management's apparent indifference to the welfare and dignity of its employees generally. Management has had and continues to have an obligation to its employees to press GSA for a cafeteria, as provided for in the GSA lease with Bresler and Keiner. Yet the Agency has waited 3½ years before taking any action to obtain GSA cooperation clarifying the issue. On October 1, 1975, one day after being informed by Local 3331 that an employee-opinion survey on the cafeteria issue was about to be conducted, Mr. Edward Rhodes, the newly appointed Deputy Assistant Administrator for Administration sent a letter to Mr. Earl W. Eschbacher, Chief of the Metropolitan Operations Branch, Space Management Division, GSA Regional Office, requesting that GSA "determine the feasibility" of providing a full-range cafeteria for EPA Headquarters employees. To the knowledge of Local 3331, at no time previous to Mr. Rhodes' letter of October 1, 1975 has EPA top management made any effort even to raise the issue of an employee cafeteria with CSA or to inform its own employees concerning the existence of the cafeteria requirement in the lease.

The cafeteria issue is not intrinsically a problem of crucial importance to the Agency, nor is it in itself the major cause of low employee morale. But the issue is important in the eyes of most EPA Headquarters employees, because they now believe that their welfare as a group has, in this instance, been arrogantly subordinated to the interests of top-level GSA officials and politicians, past and present. Moreover, they perceive that the inaction by EPA management itself on this issue has not been in their own best interests. Therefore, EPA employees of Local 3331, must question the sincerity of management's declarations of concern for its employees' welfare. If management will not go to bat for its employees on an issue so clear-cut as the enforcement of the GSA lease provision for an employee cafeteria, how can EPA employees reasonably be expected to be anything but skeptical toward management's soothing pronouncements on much broader and complex matters such as hiring, promotion, and reduction-in-force policies and practices?

Management need look no further than the credibility gap, which exists between it and the rank and file of EPA career employees, as one of the principal causes of low employee morale. Employees do not like to be deceived by management, either by acts of commission or acts of omission. They want the truth on all matters, great and small, affecting their welfare. When they do not get the truth from management they may be confused and misled, but when they learn the truth from other sources the inevitable results are distrust and disrespect for management, which contributes to the morale problem.

Attachment D

24 FEDERAL TIMES FEBRUARY 23, 1976

WATERSIDE MALL MYSTERY

A Cafeteria It's Not, GSA Admits at Last

By DAVID H. ROTHMAN

Special to Federal Times

WASHINGTON — Some pesky federal workers thought they and their stomachs knew it all along.

Now the General Services Administration, in a much-delayed letter to the General Accounting Office, has officially acknowledged what the gripers considered so obvious:

That the giant Waterside Mall here is supposed to have a cafeteria for the 3000 workers at the headquarters of the Environmental Protection Agency.

"It is our position that the cafeteria requirement still exists," GSA wrote GAO about the $60-million-plus lease signed in 1971 with Mall developer Charles Bresler.

He has been a friend of former Vice President Spiro Agnew and other political notables.

The General Services Administration didn't mention that fact in its letter to GAO. But GSA, Uncle Sam's real estate agent, did say its Office of Investigations is trying to puzzle out why the government let the cafeteria remain missing so long.

Last September *Federal Times* reported the mysterious absence of the cafeteria, worth an estimated $500,000 or more. Rep. Charles Rose, D-N.C., asked GAO to look into the matter. Carol Forbes, legal counsel to Rose, now expects that GAO will issue an interim report on the cafeteria within the next few weeks.

In an interview in August 1975 Bresler denied that his contacts in any way influenced his dealings with GSA. He maintained that Waterside's existing eating facilities, fast food places and restaurants, met the lease's requirements.

And GSA itself told *Federal Times* last summer: "The cafeteria requirement was deleted orally, as the lessor met our requirements for providing food facilities in the Waterside Shopping Mall."

But a letter from GSA acting general counsel Donald P. Young to GAO assistant general counsel Seymour Efros, dated February 3, 1976, said:

". . . We have not found, nor has the lessor furnished, any documentation which would establish that a GSA official waived, deleted or bargained away the government's rights with respect to the [cafeteria] requirement.

"The matter of the lessor's noncompliance with the requirement was first raised formally by the contracting officer [for the lease] in a letter to the lessor dated February 28, 1972 . . .

"The contracting officer stated that the rental payments would be withheld beginning March 31, 1972, until there was tangible evidence of adherence to the requirement."

Bresler responded, said GSA, with a letter, dated March 2, 1972, "enclosing a copy of a vending facilities clause and alleging that it was the food facility requirement in the [lease] solicitation . . ." But GSA said: "A review of the lessor's submission dated February 12, 1971, which amended his initial offer and made specific reference to the cafeteria requirement, clearly shows this allegation to be erroneous."

Apparently referring to former GSA official Larry Roush, GSA reported that "the contracting officer's superior" wrote Bresler on April 19, 1972, that the agency wouldn't withhold rent until it completed studies.

The studies presumably have never been finished, observers speculate.

"It is recognized that questions arise as to why the enforcement of the cafeteria requirement was apparently abrogated in 1972," GSA said. "The GSA Office of Investigations is conducting an inquiry into the matter but has not yet completed its investigation.

"As a consequence, we are currently unable to provide the explanation for GSA's inaction from mid-1972 to the end of 1975."

Seeking the cafeteria, a contracting officer met with Bresler on January 6, 1976, but the landlord didn't back down.

If the issue can't be resolved "between the contracting officer and the lessor, it is anticipated that a 'final decision' will be issued pursuant to the disputes clause of the lease," GSA said.

"Thus the matter may be ultimately resolved by the GSA Board of Contract Appeals," GSA wrote GAO.

According to GSA, "our efforts are in the direction of obtaining compliance with the cafeteria requirement rather than seeking damages or restitution for noncompliance."

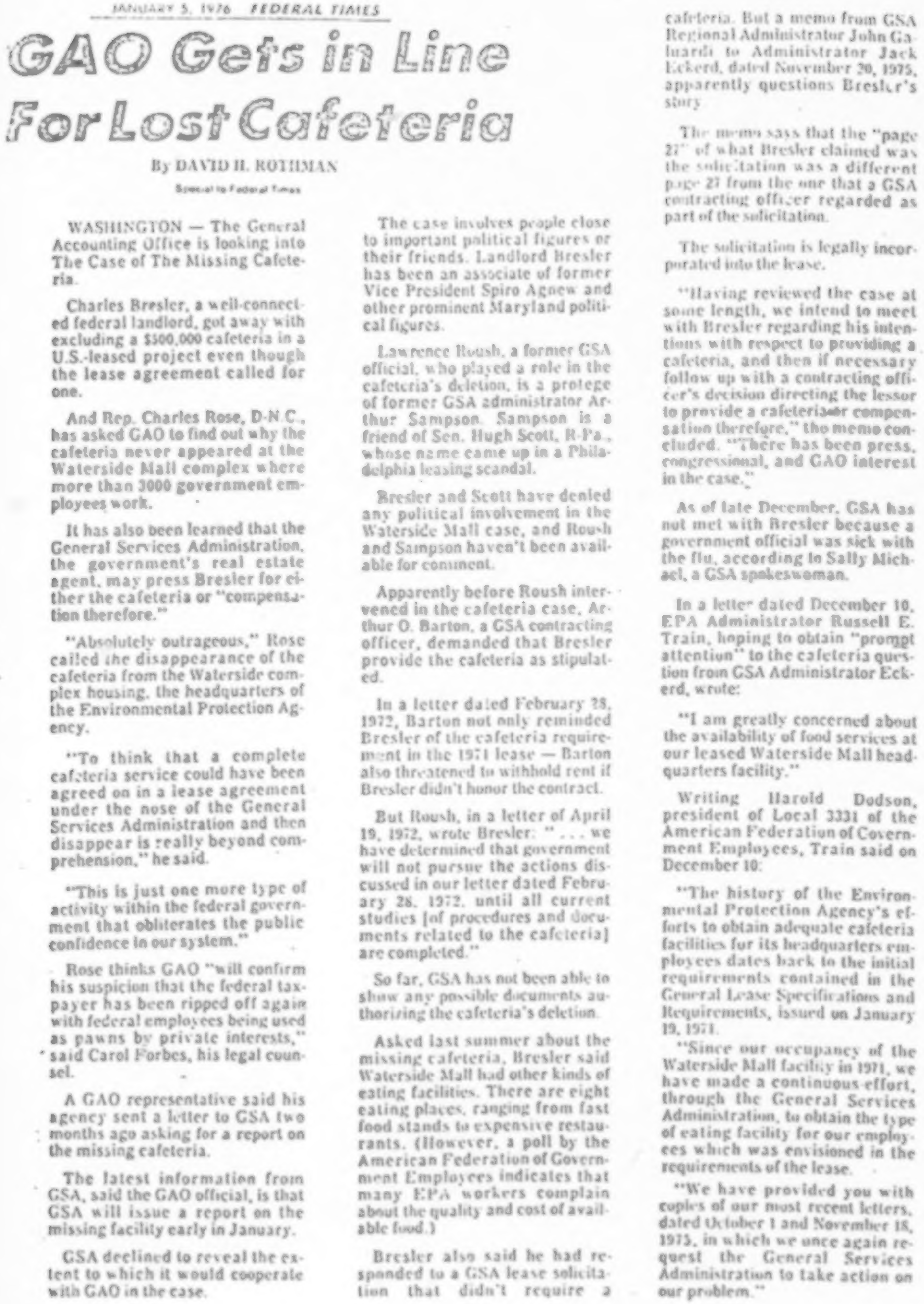
Harold Dodson, president of Local 3331 of the American Federation of Government Employees, told *Federal Times* about GSA:

"I'm delighted they've admitted that we're still entitled to a cafeteria."

But Dodson, whose members have criticized the quality and prices of Waterside's existing food facilities, added:

". . . I'm disappointed that GSA isn't taking a more positive position."

He expressed concern that the union members might not get their cafeteria for quite some time because of matters possibly being bogged down in the appeals procedure.



JANUARY 5, 1976 FEDERAL TIMES

GAO Gets in Line For Lost Cafeteria

By DAVID H. ROTHMAN

Special to Federal Times

WASHINGTON — The General Accounting Office is looking into The Case of The Missing Cafeteria.

Charles Bresler, a well-connected federal landlord, got away with excluding a $500,000 cafeteria in a U.S.-leased project even though the lease agreement called for one.

And Rep. Charles Rose, D-N.C., has asked GAO to find out why the cafeteria never appeared at the Waterside Mall complex where more than 3000 government employees work.

It has also been learned that the General Services Administration, the government's real estate agent, may press Bresler for either the cafeteria or "compensation therefore."

"Absolutely outrageous," Rose called the disappearance of the cafeteria from the Waterside complex housing, the headquarters of the Environmental Protection Agency.

"To think that a complete cafeteria service could have been agreed on in a lease agreement under the nose of the General Services Administration and then disappear is really beyond comprehension," he said.

"This is just one more type of activity within the federal government that obliterates the public confidence in our system."

Rose thinks GAO "will confirm his suspicion that the federal taxpayer has been ripped off again with federal employees being used as pawns by private interests," said Carol Forbes, his legal counsel.

A GAO representative said his agency sent a letter to GSA two months ago asking for a report on the missing cafeteria.

The latest information from GSA, said the GAO official, is that GSA will issue a report on the missing facility early in January.

GSA declined to reveal the extent to which it would cooperate with GAO in the case.

The case involves people close to important political figures or their friends. Landlord Bresler has been an associate of former Vice President Spiro Agnew and other prominent Maryland political figures.

Lawrence Roush, a former GSA official, who played a role in the cafeteria's deletion, is a protege of former GSA administrator Arthur Sampson. Sampson is a friend of Sen. Hugh Scott, R-Pa., whose name came up in a Philadelphia leasing scandal.

Bresler and Scott have denied any political involvement in the Waterside Mall case, and Roush and Sampson haven't been available for comment.

Apparently before Roush intervened in the cafeteria case, Arthur O. Barton, a GSA contracting officer, demanded that Bresler provide the cafeteria as stipulated.

In a letter dated February 28, 1972, Barton not only reminded Bresler of the cafeteria requirement in the 1971 lease — Barton also threatened to withhold rent if Bresler didn't honor the contract.

But Roush, in a letter of April 19, 1972, wrote Bresler: ". . . we have determined that government will not pursue the actions discussed in our letter dated February 28, 1972, until all current studies [of procedures and documents related to the cafeteria] are completed."

So far, GSA has not been able to show any possible documents authorizing the cafeteria's deletion.

Asked last summer about the missing cafeteria, Bresler said Waterside Mall had other kinds of eating facilities. There are eight eating places, ranging from fast food stands to expensive restaurants. (However, a poll by the American Federation of Government Employees indicates that many EPA workers complain about the quality and cost of available food.)

Bresler also said he had responded to a GSA lease solicitation that didn't require a cafeteria. But a memo from GSA Regional Administrator John Galuardi to Administrator Jack Eckerd, dated November 20, 1975, apparently questions Bresler's story.

The memo says that the "page 27" of what Bresler claimed was the solicitation was a different page 27 from the one that a GSA contracting officer regarded as part of the solicitation.

The solicitation is legally incorporated into the lease.

"Having reviewed the case at some length, we intend to meet with Bresler regarding his intentions with respect to providing a cafeteria, and then if necessary follow up with a contracting officer's decision directing the lessor to provide a cafeteria or compensation therefore," the memo concluded. "There has been press, congressional, and GAO interest in the case."

As of late December, GSA has not met with Bresler because a government official was sick with the flu, according to Sally Michael, a GSA spokeswoman.

In a letter dated December 10, EPA Administrator Russell E. Train, hoping to obtain "prompt attention" to the cafeteria question from GSA Administrator Eckerd, wrote:

"I am greatly concerned about the availability of food services at our leased Waterside Mall headquarters facility."

Writing Harold Dodson, president of Local 3331 of the American Federation of Government Employees, Train said on December 10:

"The history of the Environmental Protection Agency's efforts to obtain adequate cafeteria facilities for its headquarters employees dates back to the initial requirements contained in the General Lease Specifications and Requirements, issued on January 19, 1971.

"Since our occupancy of the Waterside Mall facility in 1971, we have made a continuous effort, through the General Services Administration, to obtain the type of eating facility for our employees which was envisioned in the requirements of the lease.

"We have provided you with copies of our most recent letters, dated October 1 and November 18, 1975, in which we once again request the General Services Administration to take action on our problem."

— UPDATE —

Attachment E

22 FEDERAL TIMES . AUGUST 23, 1976

GSA Explains

Case of That Missing Cafeteria: 'Inadvertent'

By DAVID H. ROTHMAN

Special to Federal Times

Only by accident did the government not make a landlord provide a cafeteria for federal workers at Washington's Waterside Mall, the General Services Administration claims.

But the office of Rep. Charles Rose, D-N.C., says the answer given to the congressman by GSA through the General Accounting Office "is totally incomplete."

And Harold Dodson, president of Local 3331 of the American Federation of Government Employees, has accused GAO of tolerating "a fox-in-the-henhouse deal." He thinks GAO trusted GSA's internal investigation too heavily. GAO was called into the matter by Rose.

The landlord is Charles Bresler, formerly a state legislator in Maryland and once a campaign aide to Spiro Agnew.

Bresler in 1971 signed a $60 million-plus lease to rent parts of Waterside as headquarters for the Environmental Protection Agency. A government cafeteria, specified in the lease GSA negotiated, was never built. Experts estimate the cafeteria's worth at more than $500,000 over the life of the 20-year lease.

EPA officials pressed for a cafeteria, and a GSA official, later overruled, threatened in 1972 to withhold rent if Bressler didn't build a cafeteria. But in a report last month to GAO, GSA claimed the cafeteria just disappeared in a bureaucratic shuffle.

John V. Mulligan, acting assistant general counsel of the GSA public buildings division, wrote Seymour Efros, assistant general counsel at GAO: "In summary, it appears that the failure by GSA to enforce the cafeteria requirement was due to inadvertence rather than a conscious decision not to enforce the lease.

"Factors contributing to the inadvertency were the number of officials who became involved in the problem and the high rate of turnover among these officials.

[illegible] resulted in a situation where GSA officials were either unaware of the problem or unaware of who had the responsibility for pursuing the matter.

"The matter is now, however, being vigorously pursued.

"The contracting officer has issued a decision pursuant to the disputes clause of the lease and the lessor has appealed from that decision.

"The case is pending before the GSA Board of Contract Appeals.

"In the meantime, contracting officials are negotiating with the lessor for the purpose of settling the dispute."

As of this writing, a date had not been set for the case to be heard before the board.

In a letter this month to Rose, the general counsel's office at GAO summarized GSA's conclusions and said: "We trust this report satisfies the purpose of your inquiry and will prove helpful to you."

But Carol Forbes, Rose's legal counsel, said:

"While we appreciate some of the follow-up work done by GAO, we feel that the answer given is totally incomplete and unacceptable toward the satisfactory solution to the problem.

"The problem is to see that the cafeteria is installed or that the Bresler firm returns the hundreds of thousands of taxpayers' dollars."

Forbes said Rose would ask GAO for a more complete explanation of the cafeteria's disappearance.

Referring to the cafeteria situation as "an apparent fraud" against the taxpayers, Forbes expressed hope that action by the GSA Board of Contract Appeals would help to bring the facts of the case to light.

Dodson said: "AFGE Local 3331 is very much disappointed in . . . both GAO and GSA and finds it hard to believe that the turnover of a couple of officials at GSA could cause a $500,000-plus section [illegible]

A GAO official said of GSA's report: "I don't know what more they could have done."

He said GSA "certainly didn't try to evade its responsibility. They are taking steps now to negotiate a settlement on the thing. It is before the board of contract appeals. You can go back and wring your hands over what happened, but they've admitted their mistakes."

About the dissatisfaction Rose's office expressed with the explanation given so far, the GAO official said: "We were responsive to Congressman Rose's request . . . If we were responsive in getting the report, we'll be responsive in getting more details if he desires."

Almost a year has passed since *Federal Times* revealed that the specified cafeteria was never built, and since Rose contacted GAO.

Bresler has claimed that existing eating places at Waterside are satisfactory. He has said he is innocent of any wrongdoing.

Several thousand federal employees work at Waterside.

Progress !!!!

AT WATERSIDE MALL

GSA Orders Cafeteria

A contracting officer's decision has been issued requesting Charles Bresler, developer of Waterside Mall in Washington, to include a government workers' cafeteria in property leased to the Environmental Protection Agency.

A letter informing Bresler of the decision, signed by Earl W. Eschbacher, chief of the metropolitan operations branch of the space management division of the General Services Administration, was mailed March 17.

Bresler has 30 days from receipt of the letter to appeal the decision. Under it, GSA requires him to provide by April 15 "a schedule showing dates of contruction and occupancy of a cafeteria conforming with this decision."

APRIL 5, 1976 . **FEDERAL TIMES**

Mr. DODSON. Local 3331 is the American Federation of Government Employees Union at EPA. It represents the bargaining unit at headquarters, roughly about 2,000 people, and at the time that I became involved in the so-called, "Case of the Missing Cafeteria," I was president of this union, just having recently been elected president. We first became aware of the requirement for a cafeteria when we were contacted by a free-lance writer who had written an article for the Federal Times, and with your permission, sir, I have some exhibits that I would like to submit for the record with my prepared statement.

This would be attachment A, which is an article from the Federal Times of September 3, 1975, issue, and it is titled "Case of the Missing Cafeteria," and it was written by Mr. David H. Rothman.

We worked with Mr. Rothman for some time after that, and I think that this was really the beginning of EPA becoming, shall I say, reinterested in the cafeteria issue.

My first experience with the cafeteria had taken place around March or April 1973. I was working for the Environmental Protection Agency and was stationed in Crystal Mall, building 2 in Crystal City, Arlington, Va. We were going to be moved in May 1973 to Waterside Mall. I was successful in getting the agency, in the person of Mr. Howard Messner, to meet with the employees to discuss problems of parking, cafeteria and so forth, and Mr. Messner told us in this meeting in May 1973 that we were going to have a cafeteria, that they were still constructing the building and that one would be built.

I heard nothing further until we compared our efforts with Mr. Rothman. Attachment A, which is Mr. Rothman's first article on the cafeteria, alludes to——

Mr. LEVITAS. What was the date of that?

Mr. DODSON. September 3, 1975, and it alludes to a possible relationship between Mr. Agnew—Vice President Agnew—and Mr. Charles Bresler, and questioned whether Mr. Agnew's influence may have resulted in changing the zoning of this particular property.

It is my understanding that this area, down in Southwest, was, oh, a lot of warehouses, very low-income housing, and freight yards, things of this sort, and it was to be redeveloped into a very nice mix of housing, townhouses, apartments, and with much improved low-income housing as a part. The heart of that was to be the mall complex, which would have three towers on each end, have apartments with the mall in the center having the commercial interests to support all of the development, housing development.

According to what Mr. Rothman is alluding to, Mr. Agnew's influence may have been used to change this, so that instead of the housing, it became office space and I understand it took a rather high level change in zoning requirements. In fact, I believe that is part of the proposal, that the zoning, the so-called No. 55, that the zoning waiver or variance must be shown.

As I say, we started working in conjunction with Mr. Rothman, and one of the first things that the union did was to put together a survey of the employees to see, one, if they wanted a cafeteria; two, if they would support a cafeteria, and things of this sort.

We did this in September, the last of September 1975, and that, sir, is attachment B in the records that I will submit.

The interesting part of this is that 95 percent of the employees surveyed, and at that time we had 1,018 returns, 95 percent said that they were not satisfied with the present quality and availability of food service within the Waterside Mall complex. Eighty-eight percent indicated that the prices charged by the fast food outlets in the mall at that time were too high, generally too high.

At that time, to set the stage for the employees, we had no cafeteria, Government cafeteria, closer than the HUD and DOT cafeterias, and I timed that for my testimony before the GSA Contract Appeals Board, and I think it took me about 21 minutes to walk one way. With a 30-minute lunch period it was impossible to go over there and return, so the employees were pretty well stuck with what we had in the mall, which was fast food.

The employees in the survey indicated by 97 percent that they believed they would benefit from having a cafeteria.

Mr. LEVITAS. What was that number?

Mr. DODSON. Ninety-seven percent, and we got a resounding vote of approval from the employees by 88 percent for the union to continue its efforts in trying to see what we could do to get a cafeteria.

I think that in listening to the EPA testimony, I believe Mr. Hanley was indicating that the EPA got back into the cafeteria business in October 1975. I think that probably our survey and the subsequent letter which I wrote to Mr. Train, the Administrator of EPA, may have had something to do with that.

I sent him a letter with an analysis of the results of the survey, and that, sir, is attachment C.

The results of the survey were that the employees were dissatisfied with what they had. They very much wanted a cafeteria. They felt they would benefit from a cafeteria, and there were many reasons for that. There are many people working for EPA who have diet problems. There are people that have diet problems for health reasons.

There are people who work for EPA that have certain tastes in food that is not supplied by the fast food outlets, and we also have many people at EPA that are lower-graded employees.

These employees, many of them are single mothers with one, two, three children that they are trying to support, and we are talking about grades from GS-2 through GS-5 or GS-6 or so. Obviously, these people cannot spend a great deal of money for food, and to get a well balanced meal even back at this time, it would have taken $4 or $5, at someplace like Hogates or other place along Maine Avenue.

Now that has gone up to $6, $7, $8, or $9, and these people, too, I felt if they had a cafeteria, this would have given them the opportunity to have made the lunch meal their main meal for the day. They would have been getting a good rounded meal which in many places they probably didn't get.

Now to see if our survey was still valid at the present time, the union conducted another survey, and if you will bear with me a moment, in May 1981. It wasn't too surprising to us that this survey almost duplicated the one that we had done in 1975.

For example, out of the returns, 99.8 percent of the employees said that they were not satisfied with the food service in the mall. Almost 50 percent of the employees indicated that they would patronize the cafeteria 3 to 5 days a week.

Again, 96.6 percent of the employees surveyed indicated that they thought the prices generally were too high in the fast food outlets.

Of the employees surveyed, 97.6 said that they believed that they would benefit from a cafeteria in the mall.

There is no question that the employees at EPA want a cafeteria, need a cafeteria, that it would serve many purposes, not the least of which is the very humanitarian purpose of furnishing a place for our lower-grade employees with dependents to get a good meal at a reasonable price, something they could afford.

In our first introduction to this, we talked with Mr. Rothman, and worked with him by sharing information in the contacts that we had with Congressman Charles Rose.

I was interested in noting that Mr. Rothman indicated that Congressman Rose had asked GAO to investigate the case of the missing cafeteria, and that the first report from GAO came back with more of a veneer-type report, and that Congressman Rose had to ask them to go back and do an in-depth investigation, so that actually there were two investigations.

The second one came out much stronger, and I think this was the one that had the recommendations that rent be withheld until the cafeteria was built, in fact, said the cafeteria should be built either by the Government or by the landlord, and that rent should be withheld until one was built.

When we introduced this to the Agency in September, the last of September 1975, I must say that the Agency, in the form of Mr. Alm, the Assistant Administrator for Planning and Management, was very cooperative.

Mr. Ed Rhodes worked for Mr. Alm, and they were very cooperative in again starting contacting GSA and doing what they could to try to rectify this problem.

The union had no legal standing in this problem. We were sort of a third party without legal standing at all, but we were sort of the catalyst to move it on, and EPA did start working on trying to get GSA to do something about it from that point on.

I don't know what happened from May 1973 until October 1975, but I do know after October 1975 that EPA worked in trying to get something done, up to and including the appeal with the Contract Appeals Board, and I am at a loss to understand GSA's position in this too.

I have heard the testimony here today, and I am just at a total loss as to what went on there.

Mr. McEwen. Mr. Chairman?

Mr. Levitas. Yes.

Mr. McEwen. Mr. Dodson, would you have any idea as to who made the decision to not pursue this?

Mr. Dodson. At GSA?

Mr. McEwen. Yes.

Mr. Dodson. No, sir, I don't. I talked with the reporter, Mr. Rothman, and he mentioned a name that I don't recall at this moment, but it was still a very nebulous type thing. We couldn't seem to pin anything down on it. The blame was passed from one to the other at GSA. Seemingly people had losses of memory.

Mr. McEwen. Presume that it is 24 hours from now and GSA is sitting there and they say, Well, it has already gone to the Board and we can no longer pursue it. We would have to renegotiate a contract. We don't know who is responsible. It would cost the government a lot of money. The need has already been filled. Probably the fact is that anyone responsible for this situation has long since been swept away, and we have replaced them with all fine folk who will enforce all future contracts that the Government signs. Do you have any direction as to where we could ferret out who might have made a deal with the private contractor whereby he would renege on a signed agreement and suffer no recourse, and how we could locate such an individual, based on your dealings in this area?

Mr. Dodson. No, sir, I can't really pinpoint any particular individual or any direction.

Mr. McEwen So chances are we might be poking a cloud here tomorrow, and there is really no assistance you can give us right now on that.

Mr. Dodson. What I would like to do is to see if I can contact the freelance writer and discuss it with him, see if we can refresh our memory, and perhaps I could come back with a name.

Mr. McEwen. If you can do that, and if you would like to, I would be very receptive to it.

Mr. Dodson. Yes, sir, I will try to do that.

Mr. McEwen. Thank you.

Thank you, Mr. Chairman.

Mr. Levitas. Thank you, Mr. McEwen.

When did you say you first became aware of the fact that there was a cafeteria possibility for the employees?

Mr. Dodson. In May of 1973 when Mr. Messner met with the employees in Crystal City in Arlington, Va. to tell the employees about some of the conveniences that they were going to have at Waterside Mall, which we would be giving up in Crystal City.

We had the cafeterias there, we had parking, we had a shopping center, and we were moved over into this foreign country with a building under construction. They may have had one fast food outlet at that time. I don't remember any.

Mr. Levitas. And that is when you first knew of the fact that there would be a cafeteria?

Mr. Dodson. Yes, sir, he said that there would be a cafeteria.

Mr. Levitas. Later that year you wrote a letter or met with Mr. Alm, or was that in 1975?

Mr. Dodson. That was in 1975. I heard nothing further from that May meeting until September 1975.

Mr. Levitas. And in 1975 you met with Mr. Alm, who was an official of EPA, and said, "What about the cafeteria?"

Mr. Dodson. We did a survey first after we talked with the writer and his article came out. Then we did a survey. Then we took the results and presented that to Mr. Train through Mr. Alm.

Mr. Levitas. The article in Federal Times came out in?

Mr. Dodson. September.

Mr. Levitas. In the early part of 1975?

Mr. Dodson. In September.

Mr. Levitas. In September 1975?

Mr. Dodson. Yes, sir, September 3.

Mr. Levitas. And it is your testimony that officials at EPA have been supportive of the efforts to get a cafeteria?

Mr. Dodson. No, sir, I can't speak past the time that we went to the Contract Appeals Board.

Mr. Levitas. Were you here when Dr. Horton testified?

Mr. Dodson. No, sir, I missed the shuttle bus.

Mr. Levitas. Well, he testified that he is meeting with Mr. Carmen at GSA this afternoon to try to get them to do something.

Mr. Dodson. That is good.

Mr. Levitas. But what about from when you talked with Mr. Alm up until now? Has EPA management been supportive of the efforts to get a cafeteria?

Mr. Dodson. Mr. Chairman, I would have to answer that in a rather indirect negative way, in that I don't know that there is much that they could have done with GSA taking the position they did, particularly with the Appeals Review Board decision, but the Agency has not been overly cooperative in trying to alleviate the problem that the employees have there in the lunch period.

We have no place to eat our lunches. We have a building that is still under construction and is still infested with rodents and insects, and you could expect such when you have to eat lunches on your desks with the crumbs. The cleaning is not the best.

I was looking at a copy of the request for proposal [RFP] that went out, and noticed some of the things that the landlord was supposed to do. Not too much of that is done. Employees have to eat at their desks, brown bag, and a great number of people bring brown bag lunches.

The Agency has done nothing to try to get a room set aside that we can use. The union has asked each successive administration, and more than once, to set aside a room, and said that the union would then equip it with vending machines, microwave ovens, and things of that sort, would take upon itself the responsibility of maintaining it, but we have nothing.

Mr. Levitas. Do you have any evidence that EPA contacted GSA officially or unofficially seeking to get this cafeteria established?

Mr. Dodson. I have seen copies of correspondence that Mr. Rhodes wrote to GSA, encouraging GSA to give attention to the matter, and I think some of those could have been stronger, but certainly they were supportive of what we wanted, which was a cafeteria.

Mr. Levitas. Was there anything after that?

Mr. Dodson. No, sir, I have seen nothing since then.

Mr. Levitas. You heard Ms. Minow testify that EPA intervened in that Board of Contract Appeals?

Mr. Dodson. Yes, sir, I testified for GSA at those hearings. I was only in the hearing room during my testimony.

Mr. Levitas. Ms. Minow testified that she was the lawyer who appeared on behalf of EPA urging that the Board of Contract Appeals require the lessor to build the cafeteria.

Were you aware of that?

Mr. DODSON. No, sir, I was not.

Mr. LEVITAS. How many people work at the Waterside Mall for EPA?

Mr. DODSON. In the mall itself there is, I would estimate, about 3,000 people.

Mr. LEVITAS. Approximately 3,000?

Mr. DODSON. Yes, sir.

Mr. LEVITAS. Total?

Mr. DODSON. Yes, sir.

Mr. LEVITAS. And how many of those are represented by your union?

Mr. DODSON. Again I would estimate about 2,000. There was an interesting side issue to our efforts that might be of interest to the committee. After we, we being the union, of course, became active in this, and spurred the agency to go to GSA, and, of course, GAO was investigating for Congressman Rose, things began to look like we were deserving of a cafeteria legally as well. There was one of the fast food managers, lessors, I guess, who came to the union, and we have no doubt that Mr. Bresler was behind this individual fully, proposing that he turn his little restaurant and his bar, which he wanted to make into a disco, into a cafeteria. And even going so far as to bring plans up as to how he would accommodate 300 people at a sitting, and he wanted us to sign.

There was a legal document fixed up for the union's signature. Of course we had no legal standing in this, but I am quite sure that had we signed this, had I signed it for the union, that it would have gone back to GSA and would have been further support for this mess, but we couldn't sign something like that because as far as we were concerned this particular person was going to get more space for a larger disco, and we would really have suffered. Had we gotten anything perhaps it would have been better than what we have got now.

Mr. LEVITAS. Do you have any questions that you would like to ask?

Thank you very much, Mr. Dodson. We appreciate your contribution, and your entire statement, with its exhibits, will be made part of the record.

Mr. DODSON. Thank you, Mr. Chairman.

Mr. LEVITAS. The committee will reconvene at 10 a.m., tomorrow morning, in room 2167, for a continuation of these hearings.

I can already anticipate that it will not be the last day of hearings on this subject, based on some of the testimony already received, but tomorrow we will be hearing from witnesses from the General Services Administration, as well as from Mr. Larry F. Roush, who was the first Assistant Commissioner for Operating Programs and also a former Commissioner of PBS, and who is knowledgeable about this matter from its inception.

Then I anticipate that we will have to have a subsequent meeting or meetings to conclude the testimony from others whose names have already been identified during the course of the hearing today.

If there is no further business to come before the subcommittee this afternoon, the committee will stand in recess until 10 a.m. tomorrow.

[Whereupon, at 3:25 p.m., the subcommittee was recessed, to reconvene at 10 a.m., in room 2167, Rayburn House Office Building, Wednesday, September 16, 1981.]

REVIEW OF GENERAL SERVICES ADMINISTRATION'S LEASE MANAGEMENT AT WATERSIDE MALL

WEDNESDAY, SEPTEMBER 16, 1981

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:34 a.m., in room 2167, Rayburn House Office Building, Hon. Elliott H. Levitas, (chairman of the subcommittee) presiding.

Mr. Levitas. The Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation will please come to order.

This morning we resume hearings into the matter of the so-called missing cafeteria at Waterside Mall.

As the sworn testimony and documented evidence developed yesterday, there was a lease entered into between GSA and the Town Center Management Corporation for facilities and space at Waterside Mall in Southwest Washington to provide for office space and related facilities to the headquarters of the Environmental Protection Agency.

One of the provisions of that lease as it was finally determined by the Board of Contract Appeals of the General Services Administration, was the requirement that a cafeteria be provided for the employees of the Environmental Protection Agency at no cost to the Government.

However, the Board of Contract Appeals further found in its decision that that right of the Government had been abandoned, waived, and otherwise lost to the Government because of actions or inactions by the officials of the General Services Administration.

The purpose of these hearings is both investigative and oversight in nature. Investigative, in the sense of trying to determine who was responsible, how this came about, what the facts were surrounding the entering into of that lease, the terms and provisions, the mysterious circumstances of why there were various versions of the lease and; second, in an oversight matter to ascertain if possible how this problem came about and why the taxpayers of the United States were deprived of a valuable right which according to the Board of Contract Appeals was bargained for and presumably paid for.

This is the purpose of the continuing hearings today. As I stated yesterday, it is likely that there will be the need to have additional witnesses at a later date, but today we will be hearing from present and former individuals at GSA who have had knowledge and contact with this matter at various stages of its development and evolution.

The first witness this morning was identified yesterday during the course of testimony, Mr. Peter Ting, Chief Counsel for Appeals, Claims and Litigation Division of General Services Administration, who was the lead counsel in behalf of GSA in handling the matter of the missing cafeteria before the Board of Contract Appeals.

Mr. Ting, we welcome you this morning. I would like to administer the oath to you. Would you please rise.

Do you solemnly swear that the testimony you will give before the subcommittee today will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. TING. Yes; I do.

Mr. LEVITAS. I would also like to ask Mr. Mitchell, and Mr. Hunter of GAO and Mr. Trietsch of GSA's Inspector General's Office if they would come forward.

They were the first witnesses yesterday and have an overview in case we need to place any questions to them.

I simply remind you for the record that you are still under oath.

Mr. LEVITAS. Mr. Ting, I don't know if you have an opening statement or whether or not you would want to get directly into our questions.

TESTIMONY OF PETER TING, CHIEF COUNSEL FOR APPEALS, CLAIMS AND LITIGATION DIVISION, GENERAL SERVICES ADMINISTRATION

Mr. TING. I don't have an opening statement but I will be happy to answer any questions that you have.

Mr. LEVITAS. Let me start off then by asking you to tell us what was your original contact with the matter of the Waterside Mall cafeteria, and just briefly outline what you did from that point forward until today with respect to this matter.

Mr. TING. My first contact with this case was in 1977. In 1977, my position was trial counsel with the Claims and Litigation Division, Office of General Counsel.

I was assigned this case. I subsequently litigated this case before the Board of Contract Appeals; in the course of the preparation I had interviewed various witnesses.

In the course of litigation I served as an advocate to advance the government's position. Subsequent to the hearing I prepared the government's brief and reply brief and when the decision of the Board of Contract Appeals was issued I made the decision not to file a motion for reconsideration.

Since that time I have had no further contact with the matter until a few days ago.

Mr. LEVITAS. What was the date that you first were assigned this case, Mr. Ting?

Mr. TING. I don't recall specifically, but it was in 1977.

Mr. LEVITAS. Did you receive any guidance or instructions or directions from anyone in GSA as to the matter of handling this case before the Board of Contract Appeals?

Mr. TING. My chief counsel for appeal at that time is now the chairman of the Board of Contract Appeals, Leonard Suchanek. He called me into his office one afternoon, and basically advised me that this was a very sensitive case, that he wanted me to handle the case directly and to give a lot of attention to the prosecution of the case.

That is the extent of the instructions that I received from him.

Mr. LEVITAS. Yesterday we heard witnesses from the Environmental Protection Agency testify and received certain documents from them in the course of that testimony.

The gist of it, to paraphrase, was that their working relationship with you and other lawyers directly operating in this case was very good, very cooperative, very professional, but that the attitude of the General Services Administration in general seemed to be quite different. They referred to a letter that the General Counsel of GSA had written to the General Counsel of the EPA in effect saying, keep your nose out of our business. We are handling this and you are just going to muddy the waters on it.

Were you involved in originating it or consulted about that particular circumstance?

Mr. TING. Yes, I was, and I was responsible for drafting the letter. If I recall the circumstances correctly, what had happened was that the EPA had requested that the Board's records be reopened to receive a document which is basically a transcript of a Channel 7 news report.

At that time I took the position that we had had an evidentiary hearing where witnesses had been sworn and testified, where documents had been authenticated and submitted.

I do not think in that type of an adversary situation it was proper to introduce into the record third-party hearsay. As a matter of fact, I thought it might even contaminate the integrity of the record. Therefore, I took the position that we had had our chance before the Board of Contract Appeals, we had done our absolute best and, therefore, I did not think it was appropriate to reopen the record to introduce what to me was hearsay evidence.

Mr. LEVITAS. Mr. Ting, you are, I know, very familiar with the decision rendered by the Board of Contract Appeals. Every lawyer who is involved in a case knows or most of the time knows that he is on the right side and disappointed when he loses the case.

I would like, however, your professional evaluation or judgment about that decision.

Mr. TING. I guess the question that you are really asking me is why didn't we appeal or move for reconsideration of the decision.

Mr. LEVITAS. That is part of it.

Mr. TING. My response is this: If by appeal you mean an appeal to a court of the U.S. district court or the court of claims, my response is that at that time the case was not processed under the Contract Disputes Act of 1978. It was processed under the disputes clause.

At that point in time there was a Supreme Court decision by the name of *S&E Contract* versus *the United States*, citation to that case, I believe is 406 U.S. Reporter, page 1.

That case basically says where the Government picks the forum to take a contractor, the Government only has one shot.

We are not—we cannot appeal from the Board's decision.

That principle has been upheld by the Court of Claims in a number of subsequent decisions.

The other half of the question is that if by appeal you mean why didn't we move for reconsideration, my response to that is that after I read the decision I was convinced that the fact-finding by the Board of Contract Appeals was correct factually as well as legally.

As a matter of policy we don't appeal every case that we lose. If there is newly discovered evidence, we would take an appeal. If we feel that the Board's decision is incorrect we would take an appeal.

It was my judgment, my best judgment at that time and it is still my judgment today, that the Board's decision was a correct one.

Mr. LEVITAS. During the course of those proceedings, one of the issues was whether or not there was a provision in the contract requiring the lessor to provide the cafeteria in question.

There was conflicting evidence with respect to that. The Board of Appeals in effect held that there was a contract that did require the building of a cafeteria, is that correct?

Mr. TING. Yes.

Mr. LEVITAS. Would you briefly describe and evaluate the nature of the evidence provided by the lessor in those proceedings with respect to this version of the contract?

Mr. TING. I think there are two areas that I would like to address.

The first area is to what extent we are entitled to a cafeteria at no cost to the Government in the first place.

I think everyone has been assuming and starting from the standpoint that there is no question about our entitlement to the cafeteria.

My review of the file and my judgment as a lawyer lead me to believe otherwise. In order for us to understand what is involved I would like to start from the very beginning.

According to the records on January 21, 1971, Town Center had submitted an offer to the Government and the offer basically stated that a cafeteria would be furnished by the lessor to meet Government specifications provided this does not increase the lessor's cost as contained in this bid.

If so, it will be done on an actual basis plus 10 percent representing overhead and 10 percent representing the contractor's profit.

Now, after this initial submission of the offer there was apparently some negotiations between GSA representatives and representatives of Town Center Management Corp.

There was no record of negotiation from the Government's side. However, there was a record of the negotiation in the form of a letter on the part of Town Center Management.

The substance of the negotiation is reflected in a further submission of an offer which is the February 12, 1971 offer which was considered by the Government.

The February 12 offer is somewhat confusing. It says a cafeteria or cafeterias shall be provided in accordance with paragraph 10(a) of schedule B, part 3, of the offer.

Said cafeteria shall be operational concurrent with or prior to the occupancy of the general office space by the lessee.

Now, it seems to me that it is very clear in that sense that the contractor is offering a paragraph 10(a) cafeteria. A paragraph 10(a) cafeteria, as we all know, says that the cafeteria shall be provided at no cost to the Government.

However, if we look at the February 12, 1971 offer closely you will notice that this offer was submitted under the heading of special requirements and on the next page of the offer, the offeror has said all special requirements shall be provided where practicable pursuant to Government request at actual cost plus 10 percent representing overhead and 10 percent representing contractor's profit.

So the lessor has not offered to give the Government a cafeteria at no cost, the lessor has in fact given the Government an option to buy that cafeteria and if we do that we have to pay for it.

Now, I suspect that the GSA received this offer, really did not study it carefully, and in an acceptance letter, accepted the cafeteria. The question in my mind is what did we accept, did we accept a paragraph 10(a) cafeteria or did the Government accept the counteroffer submitted by Town Center which offered to give us the cafeteria at cost plus 10 and 10.

The lease which was finally signed, incorporates by reference all of these offers and the acceptance letter, a letter dated February 19, 1971, which we looked at yesterday, says the cafeteria be brought in on the phased basis. It did not say a cafeteria would be provided in accordance with 10(a).

If that language had been more specific, we would have established a clear contractual right for the cafeteria. The fact of the matter is the language was unclear. We have a counteroffer by the lessor which the Government accepted and that is where all of the confusion with respect to the cafeteria rights starts.

The second question I suppose that you might ask me is whether this version of page 27 was the real McCoy? Well, I wasn't able to establish that by clear and conclusive evidence at the hearing. The only testimony I had was by Ms. Doris Frankenfield, who was the realty specialist at that time, and her testimony was that before she sent out these solicitations she made sure that the page 27 was in the lease.

Now, if the Government had required the lessor to initial each page of the lease, a practice which I understand we are doing now, there would not have been any confusion as to which was the real McCoy.

The initial ambiguity with respect to the basic contract documents, plus the uncertainty with respect to whether there was a cafeteria requirement, whether the page 27 was in fact part of the lease, in my judgment caused some confusion within GSA circles which perhaps led to a less than aggressive pursuit of the cafeteria.

At least we now have had some time to see what the facts are. Remember now, I am looking at it from the standpoint of hindsight. When GSA officials were looking at the cafeteria and all of these problems started to come up, they didn't have the benefit of viewing the whole lease as I have in the course of my preparation, and, therefore, I can see where some of the confusion may have been originated.

Mr. **Levitas**. Leaving aside the confusion in language, or the difference between the paragraph 10(a) and the special requirements, there in fact were two differing versions of the pieces of paper that were submitted that supposedly constituted the contract.

What explanation do you have for the version that the lessor presented which was totally different from that which GSA claimed was the correct version or the copy that ultimately ended up in the possession of EPA?

Mr. TING. I have no explanation for that, Mr. Chairman. The appeal file that I received is a copy, and, as a matter of fact the issue really didn't hit me until in the middle of the hearing when he produced his copy of the lease which he testified he pulled out of his safe that morning.

Prior to that time, as far as I am concerned, the lease which was contained in the appeal file, was the lease. No one brought it to my attention that there was a dispute about which page 27 was contained in the lease. But in the course of discovery, I had found that to be a problem, and, being an advocate, I took the position that the Government's version of the lease was the real McCoy until the contractor can prove otherwise.

Mr. LEVITAS. You have no explanation as to how that different version came into the possession of the lessor?

Mr. TING. I don't have personal knowledge but I can conject that perhaps before the solicitation was officially issued by GSA, representatives of Town Center may have come into GSA and asked for an advance copy of the solicitation just to prepare for the eventual submission of their proposal.

And they might have walked into any one of the regional or central offices and picked up a sample solicitation and worked from there.

But that is speculation on my part although I don't have any factual basis to support that.

Mr. LEVITAS. Well, if that were the case, that there was a version of the draft solicitation, the language of which was submitted by Town Center, how did that get into the final version which was produced by the lessor as a signed version of the lease?

Mr. TING. I have no idea. I don't know how it did.

Mr. STANGELAND. Would the gentleman yield briefly?

Mr. LEVITAS. I would be happy to yield.

Mr. STANGELAND. Mr. Ting; is there even the remotest possibility that when the lease was presented to Mr. Bresler a wrong page 27 might have been inserted in his lease as opposed to the page 27 that appeared in GSA's lease?

Mr. TING. Yes, sir, there is that possibility but the realty specialist who put together the lease and sent it out told me that she checked very carefully before she sent out the solicitation and that the new page 27 requiring a cafeteria was inserted. She so testified under oath before the Board of Contract Appeals. I have no reason to doubt that that is what in fact had happened.

Mr. STANGELAND. Thank you.

Mr. LEVITAS. Thank you, Mr. Stangeland.

How many days of hearings were there?

Mr. TING. Six.

Mr. LEVITAS. When did those hearings occur?

Mr. TING. July 1978.

Mr. LEVITAS. And the decision was rendered on March 31, 1980?

Mr. TING. Yes.

Mr. LEVITAS. Do you have any idea why it took as long as it did to come up with that decision?

Mr. TING. The case was heard by Administrative Judge Charles Duvall.

He and the chief administrative judge were separated from service by the General Services Administration before Mr. Duvall could render a decision.

The case was subsequently assigned to Administrative Judge James Finn who subsequently resigned from the Board and went to the post office.

The case then was assigned to an Administrative Judge John I. Coldren, who, as I understand it, was held over to write this decision before he went over to the Armed Services Board of Contract Appeals.

Due to the number of changes on the Board of Contract Appeals, I would suspect that had a great deal to do with the length of time that the Board took to render its decision.

Mr. LEVITAS. I do have further questions. You were present yesterday when the EPA witnesses were testifying and one of the points Ms. Minow made was that the doctrine of estoppel against the Government is rarely, if ever, applied, and that it seemed that, at best, in this case it was a very minimal showing of a basis for estoppel. The lessor, not having suffered any damages as a result of the actions, and the question of clean hands and so forth. What is your observation on that?

Mr. TING. I am not sure I agree with Ms. Minow. I understand that when the Government enters into contracts, basically it comes down from a throne of being a sovereign and has to do business just like anyone else.

There is no reason why the Government should be treated specially in legal principles because we are the sovereign. When the Government allows itself to be sued, we have waived sovereign immunity, so to me the courts have said that a waiver of sovereign immunity should be strictly construed against the Government but in this case we are not acting in a sovereign capacity, we are acting in a contractual capacity.

The rights and obligations of the Government vis-a-vis the contractor, or the lessor in this case, is no more and no less than two commercial parties contracting with each other, so I don't agree with the concept that the estoppel doctrine has been rarely applied against the Government.

Mr. LEVITAS. I understand the lessor in this case contended that there was some sort of accord and satisfaction also. Would you describe that briefly, please?

Mr. TING. As I understand it, accord and satisfaction is a variety of the doctrine of waiver where if the Government accepted something less than it bargained for then it could not go back to get something more than it bargained for. It is an equitable principle which I guess says what I have just said.

Mr. LEVITAS. Now I want to make certain that I understand your interpretation of the decision.

The Board of Contract Appeals held that the contract, the lease, provided for a cafeteria to be built by the lessor, not at Government expense, in the lessor's space. They made that finding, did they not?

Mr. TING. No; if one reads the decision closely, I don't think the Board ever said we were entitled to a cafeteria at no cost to the Government.

I think what the Board said is this, and it is reflected on page 14 of the decision, it says we find that the pre-award negotiations, the structure of the solicitation, and the post-award conduct of the parties prior to when the controversy arose indicate that the lease solicitation contained the Government's version of paragraph 10(a) and page 27.

So the Board only found that paragraph 10(a) on page 27 was contained in the lease. Assuming we overcome that hurdle there is still the unanswered question of who is supposed to pay for this cafeteria. That question the Board never addressed. It was a question that I brought up initially when you asked me about my impression of the Board's decision.

Mr. LEVITAS. Where in the decision does the Board make its finding about what the lease provides?

Mr. TING. Page 14, next to the last paragraph. It starts out by saying, "We find that the pre-award negotiations—" so on and so forth.

Mr. LEVITAS. Now, it says on page 14 that the Board finds that the lease solicitation contained the Government's version of paragraph 10(a) and page 27.

On page 6 of the Board's opinion where it describes that lease, that is the Government version of the lease, it provides that the cafeteria shall be provided.

So as I read those two portions of the opinion together, I go back to my original statement that the Board held that the lease provided for the cafeteria as contended by the Government in these proceedings?

Mr. TING. I can't find the specific statement that you referred to on page 6. Would you be kind enough to point that out?

Mr. LEVITAS. The second two paragraphs.

Mr. TING. My reading of page 6 is that this is what the Board is setting out as the contentions of the parties.

Mr. LEVITAS. It says that is the Government's version and on page 14 it says that they agree with the Government's version.

Mr. TING. Well, the Board is saying what my argument is versus what the lessor's argument is. My contention before the Board as an advocate is that the page 27 contains paragraph 10(a), and that is what we litigated. That was the theory of the case.

Mr. LEVITAS. And that is what the Board held?

Mr. TING. The Board held that—that is right. The Board held that the lease did indeed contain the Government version of page 27, but the question is, having reached that point, who should pay for the cafeteria?

Mr. LEVITAS. The reason that the Board let the lessor off, as I read this opinion on page 15, is this:

> We now turn to the question of whether the appellant is discharged from its obligation to install a cafeteria through governmental contract. We found that it was.

Now, you can't be discharged from an obligation unless an obligation exists to begin with. Isn't that correct?

Mr. TING. Yes. The obligation to provide a cafeteria exists by reason of the contractor's bid proposal, which was that "basically we agree to give you a paragraph 10(a) cafeteria." That is the obligation.

In other words, what I read is that the Board said that if the Government exercised that option, the contractor or the lessor has no right to—not to accept, to turn down that option.

Mr. LEVITAS. And the option was to provide the cafeteria?

Mr. TING. Right.

Mr. LEVITAS. And, therefore, if the Government has that right, the lessor, the Board further holds, was discharged from that obligation because of actions on the part of the Government. Is that correct?

Mr. TING. As I read the decision, it is because of inaction on the part of the Government.

Mr. LEVITAS. Inaction? They use the words "governmental conduct."

Mr. TING. OK.

Mr. LEVITAS. All right? Therefore, as the result of governmental conduct, and the Government acts through people. It doesn't act abstractly, it works through people. It was as the result of employees of the Government that the obligation which the lessor had, or the rights which the Government had, were lost. Is that correct?

Mr. TING. I agree with that part.

Mr. LEVITAS. Therefore, that will lead us to the next step of our query: by whose conduct, were the rights of the Government lost.

Mr. Stangeland?

Mr. STANGELAND. Thank you, Mr. Chairman.

Mr. Ting, when you were trial counsel handling this case before the Board of Contract Appeals, and as you were collecting all the possible documentation concerning this lease, were there any items which you were unable to locate, letters, memos, and things of that nature?

Mr. TING. When I was preparing the case, I asked the contracting officer, who was located at 7th and D Streets, to bring to my office the entire file of the Town Center lease. That is what they did.

Now, I don't know what was in there, or what was out, or should have been in there, because I was not involved in the administration of the lease; but I was able to find everything that I needed to use from what they delivered to me.

Mr. STANGELAND. As we heard yesterday, the Board of Contract Appeals opinion referred to a solicitation No. 40, apparently issued sometime in 1970. Was this an important document to the case, and did you have a copy of that available at the time of the hearing?

Mr. TING. I did not think it was an important document. It is basically a document issued prior to the relevant solicitation. I did not consider that document as being relevant. I did not use it at the hearing.

If I had wanted to use it, I am sure that I would have been able to get hold of it.

Mr. STANGELAND. Did you ever see a copy of the GSA counsel's report concerning legal options available to the agency with regard to forcing the issue, which would have been sometime during the summer of 1972?

Mr. TING. No, sir, I haven't seen it.

Mr. STANGELAND. When you were working to prepare the case, and when you presented the case, did you believe that GSA should have won the case?

Mr. TING. This is a hard question for me to answer. At that time, I was very involved with the case, and I was determined to win it. I knew that the case was important. But in the back of my mind, I always had a great deal of reservation, because there were just so many things that I had to overcome in order to win the case.

The basic ambiguity—the ambiguity in the basic contract document—was one that concerned me.

The missing page 27 is another issue that concerned me, and I thought at that time that if I overcame those two issues, I would still have a third issue, and that was I had no explanation as to why no action was taken to pursue the cafeteria from basically the end of 1972 until 1975.

I overcame two of the three issues, but the last one caused me much trouble at the hearing, because I knew that the issue was weak from the Government's standpoint. Because my responsibility was to obtain a favorable decision from the Board of Contract Appeals, I chose to deemphasize that issue at the hearing.

Mr. STANGELAND. So you took a leaky sieve and attempted to bail the boat. But you are saying now that you agree with the Board of Contract Appeals that their decision was a correct one?

Mr. TING. Yes.

Mr. STANGELAND. I note from copies of your briefs submitted to the Board that copies were sent to Nell Minow.

Did you have contact with EPA counsel in 1978, or did you send the EPA copies of your briefs merely as a matter of courtesy?

Mr. TING. Initially, we had an EPA attorney working with us hand-in-hand, because we needed to answer some interrogatories which were submitted to us by counsel for Town Center.

So one of their lawyers, I forgot his name, was helping us answer some of these interrogatories.

Then, I think during the hearing, or shortly after the hearing, Ms. Minow became involved, and we told Ms. Minow that we would keep EPA advised every step of the way.

We would furnish them the briefs and all other papers that were filed before the Board.

I think it was a little bit more than just a courtesy copy. It was an effort to coordinate the Government's efforts before the Board.

Mr. STANGELAND. As you know, during the testimony yesterday, Ms. Minow discussed and provided for subcommittee files, copies of correspondence between Allie B. Latimer, GSA General Counsel, and Joan Bernstein, General Counsel, EPA.

Ms. Latimer, in effect, took EPA to task for submitting an EPA amicus curiae brief to the Board without its first being reviewed by GSA and because she felt it was inappropriate.

That letter was dated December 27, 1978. Ms. Bernstein replied, by letter of January 16, 1979, stating that GSA counsel Leonard

Suchanek had been aware of the brief and that EPA participation would be welcome. You were aware of that correspondence at that time?

[Letter inserted with testimony by EPA, September 15, 1981.]

Mr. TING. Yes. I was the drafter or author of that correspondence.

We had an agreement with Ms. Minow's predecessor that we would coordinate our efforts before the Board in order for the Government to prevail in its case. We could not be taking inconsistent positions.

At that time, we detected that there were some inconsistent positions advanced by EPA as well as GSA as to the approach to the case. We worked out an agreement whereby we would not object to them filing an amicus brief, so that when we submitted the brief to the Board of Contract Appeals we would not be talking out of both sides of our mouth.

So the amicus brief was filed without any GSA attorneys reviewing the brief. That disturbed me a little bit, because I thought we had agreed that we would coordinate, but no effort was made to coordinate, and the brief was filed by EPA itself.

I basically took the position that the case was in good hands. The GSA attorneys would be doing everything possible to get the cafeteria. We would accept EPA's help. We would utilize it, but we were not going to be taking inconsistent positions before the Board. Because I realized if we did that we would be cutting our own throat in the long run.

Mr. STANGELAND. So you had an objection to the EPA's brief. But was that brief inconsistent with the position you were taking in the case?

Mr. TING. I don't recall that I had a substantial objection to the brief. At the time the letter was written, it was written because I didn't know what was contained in the brief, and the letter was basically an expression of concern. I guess, to say it in a nice way, that we had better coordinate in the future if we were going to advance one position rather than taking three or four different positions.

Mr. STANGELAND. Thank you.

I have other questions, but I will yield at this point.

Mr. LEVITAS. Mr. Fary, the distinguished chairman of the Public Buildings and Grounds Subcommittee?

Mr. FARY. No questions.

Mr. LEVITAS. Mr. Molinari?

Mr. MOLINARI. As I recall yesterday, Mr. Ting, the decision of the Board after the hearings—I think you said it was 6 days—was that the lease did provide an obligation on the part of the lessor to construct this cafeteria.

However, due to the Government's inaction, they lost the right to force that portion. Is that a fair appraisal of that portion of the decision?

Mr. TING. Yes. I think what the Board held was that the page 27 which contains the cafeteria requirement at no cost to the Government, was part of the lease.

Mr. MOLINARI. In effect you said before in your testimony that you were striving for victory. At least in part you achieved a victory in that you did establish in a determination by the Board that in fact the Government was entitled to a cafeteria?

Mr. TING. Yes, sir.

Mr. MOLINARI. OK. Now, this decision came out—as the chairman mentioned before—in March of 1980. The question that I was pursuing yesterday, and I would like to go a little further with you, because I see now that you are Chief Counsel for Appeals, is what was available to the Government by way of appeal from that determination in that decision?

Mr. TING. Sir, if by appeal you mean taking it to a Federal court or the Court of Claims——

Mr. MOLINARI. Well, I would like to know from you what steps, as Chief Counsel, would have been the logical steps as a lawyer representing that agency that should have been taken at that point?

Mr. TING. If I had concluded that there were any legal and factual basis for a motion for reconsideration of the case, that would have been the only avenue available to me, to move the case for reconsideration.

Mr. MOLINARI. Did you move for reconsideration?

Mr. TING. No. I testified previously that based upon my analysis of the case and based on my judgment that the factual finding of the Board was correct, that the legal conclusion was correct, and based on my 8 years of experience in trying cases before the judges and knowing their temperament and aware of how they are going to come out, it was my determination that there was no valid basis for me to move for reconsideration——

Mr. MOLINARI. You were trial counsel at the time you made that determination?

Mr. TING. Yes, sir. I still am.

Mr. MOLINARI. Wasn't there anybody over and above you that you would normally have discussed this question with, and you would consult to see if they concurred in that determination that you had made?

Mr. TING. Yes. There is—my boss was Assistant General Counsel, Litigation Claims and Litigation Division, and his boss was the General Counsel. We could have conferred, but I was involved with the case for a period of 1 year. I think I know more than anybody else in the Legal Department about the factual situation of the case.

I wrote the brief, the reply brief. I do not believe—that without an extensive review of the transcript of 6 days of hearing, without a substantial analysis of the law, that my superior was in a position to make a better determination than I did.

Mr. MOLINARI. I find that a rather shocking answer, because I think your superior had an absolute obligation to review the file and to call you in and discuss with you the advisability of taking this up on appeal. Otherwise, what purpose do we have in having someone over and above trial counsel to assist trial counsel in making such determinations?

Are you telling this committee that there was no possibility of having a reversal? Don't you think you had an obligation, your unit had an obligation, to request at least the reconsideration?

Mr. TING. We don't request reconsideration on every case that we lose, because to do that, we would lose credibility. We only take cases up for reconsideration if we find that there is a factual error or a legal error. Now, in this case, I was not able to find that the Board had made the wrong decision.

Mr. MOLINARI. What difference does it make? Credibility, you are raising the question of losing credibility. You are talking about a very important matter that apparently has been rather infamous around this area for some time, and if you had requested reconsideration and been rejected, so what?

Assuming that your superiors went along with such a request, I think it is incumbent upon a lawyer who is handling a matter to avail himself of every opportunity by way of reconsideration or appeal to win the case that was assigned to you. And from what I am hearing today, you made a unilateral decision of your own, without consulting any superiors, as to whether you should have asked for reconsideration. Frankly, I find that rather surprising.

Mr. TING. Well, my position as chief counsel gives me that responsibility.

Mr. MOLINARI. But you made the decision when you weren't chief counsel, that is what you told me before. I think the chief counsel is the one who should have made the decision.

Mr. TING. When I made the decision, I was chief counsel for appeals, and if I could not make that decision, I would have no business being in that position.

Mr. MOLINARI. When did you make that decision, Mr. Ting?

Mr. TING. I made that decision when the decision came out.

Mr. MOLINARI. In 1980, March?

Mr. TING. That is right.

Mr. MOLINARI. Let me ask this, if I may, Mr. Chairman, with your indulgence:

Is the case closed at this point? Is there anything the Government can do at this point? Is there any real process left, or has that been waived in the intervening time between March 1980 and today?

Mr. TING. If as a result of further investigation we find evidence of fraud or other facts that we were not aware of initially, then the case can be reopened, but so far as reconsideration, the Board has a 30-day time limit which has obviously expired.

I previously testified that an appeal to the courts, was not possible because of the fact that the case was not processed under the Contract Disputes Act of 1978. That was the end of the road.

Mr. MOLINARI. Had you made a request for reconsideration within a 30-day period, at least you would have preserved your right to bring the matter into the courts. Is that correct?

Mr. TING. No; no, it would not have.

Mr. MOLINARI. It would not have?

Mr. TING. No.

Mr. MOLINARI. All right. Let me ask you this: We have heard so much about the confusion that existed in the original lease, oral agreements that were reached or not reached, language that was ambiguous. Now you are chief counsel for appeals.

Are you aware of any changes that have been made in procedures so that the clauses that were being used are not being used anymore?

First, let me ask you that question. Have there been any changes made with respect to the provisions that were being used? Are there any standardized provisions being adopted by GSA to avoid this kind of problem in the future?

Mr. TING. I don't know the answer to that question. I do know that as a result of this case we insist that the lessor initial each page of the lease. and, therefore, the chances that a missing page or a different page—could be substituted would not recur.

Mr. MOLINARI. That is kind of standard operating procedure. It isn't outside standard procedure when somebody signs a lease to have them initial each page?

Mr. TING. That is my understanding.

Mr. MOLINARI. Are these negotiations handled by attorneys, do you know?

Mr. TING. I don't know that.

Mr. MOLINARI. I have no further questions, Mr. Chairman. Thank you.

Mr. LEVITAS. Thank you very much, Mr. Molinari.

Mr. Ting, we have been told that the lease which was ultimately entered into was in response to a document or a series of documents known as solicitation 55.

During your questioning of Mr. Bresler, there was some reference to a solicitation No. 40. In fact, a document submitted by Town Center made reference to a solicitation No. 40. Are you familiar with that?

Mr. TING. Somewhat, vaguely. I don't know in what context it arose. It could be that solicitation 40 was one of those advanced solicitations that Mr. Bresler could have picked up somewhere prior to the official issuance of solicitation 55.

Mr. LEVITAS. Have you ever been able to get a copy of solicitation No. 40?

Mr. TING. No. I did not think that was relevant to my case, and I didn't use it during the hearing.

Mr. LEVITAS. Well. you asked Mr. Bresler during the Board's hearings, "Do you know what solicitation No. 40 is, or was?"

Mr. TING. I may have, but I really don't recall the context in which I asked that question.

Mr. LEVITAS. There has been a suggestion made that the differing language with respect to the cafeteria may have actually been in a solicitation No. 40, which strangely found its way into the version of the contract that the lessor produced at the hearing.

Mr. TING. That is right.

Mr. LEVITAS. Is that your understanding of it?

Mr. TING. Yes.

Mr. LEVITAS. You successfully argued that the lease between GSA and Town Center contained a provision that the cafeteria in question was to be provided without cost to the Government. Is that correct?

Mr. TING. Did I successfully argue that? That was argued, but the Board never reached that point. I think the Board decision merely says that the Government's version of page 27, which has a cafeteria requirement, at no cost to the Government, was in the lease. That is where the Board stops.

Now, the further point that we need to address, which the Board really didn't address, is that assuming that the Government's version is the real McCoy, then whether the Government should pay for it, and that was in Mr. Bresler's offer of February 12, which the Government accepted.

Mr. LEVITAS. Well, you mean February 12, 1974?

Mr. TING. No.

Mr. LEVITAS. 1971?

Mr TING. Yes. I have submitted some documents to Mr. Nolen and if you would look at exhibit 20 of the appeal file, there is a letter dated February 12, 1971, which is the second counteroffer submitted by Mr. Bresler.

Mr. LEVITAS. Do you have a copy of—what was that exhibit number again?

Mr. TING. 20.

Mr. LEVITAS. While we are locating that, let me ask you to turn to page 43 of your brief before the Board of Appeals. Page 43. Do you see that?

Mr. TING. Yes, sir.

Mr. LEVITAS. In the second paragraph on that page, there is reference made to a letter, the Government's letter, of February 12, 1974.

What letter is that?

Mr. TING. Are you looking at page 43, sir?

Mr. LEVITAS. Yes.

Mr. TING. The second paragraph.

Mr. LEVITAS. Starting, "If the Board determines that the Government is entitled to a free cafeteria."

Mr. TING. Are you looking at my brief? My brief says, "If the Government"—OK.

Mr. LEVITAS. Is that just a typographical error? Should that be 1971 rather than 1974?

Mr. TING. Yes, it is.

Mr. LEVITAS. Let's read what you say there. You say, "In any event, there was nothing in the Government's February 12, 1971 letter that even remotely suggests that the appellant had been released of any of its obligations under the lease, much less about the cafeteria which had been in dispute since February, 1972."

Was that your belief at the time you wrote that?

Mr. TING. Yes.

Mr. LEVITAS. Is it still your belief?

Mr. TING. Yes. At that time, I was advancing the Government's position as an advocate. I am not playing that role now. I am stepping back and I am taking a look at the whole situation, and basically evaluating the Government's real position in a sense.

At the time I wrote the brief, I had only one purpose in mind, to win the cafeteria case and to get the Government a cafeteria. So some of the things that I said in the brief are skewed in the Government's favor.

Mr. LEVITAS. All right. Now, on page 4 of that February 12 letter that you referred to, on page 4 under "Special Requirements," reference is made to the cafeteria. It says, "The cafeteria shall be provided in accordance with paragraph 10(a)," et cetera.

The document which the Board of Appeals held to be the version of the contract that you contended was a version of the contract, says this in paragraph 10(a):

> All space occupied by the cafeteria shall be excluded from the area covered by the lease and the lessor should assume control of such space without cost to the Government.

Now, that is pretty clear English to me.

Mr. TING. Yes.

Mr. LEVITAS. And that was what the Board found the contract to consist of.

Mr. TING. That is right.

Mr. LEVITAS. You also contended that the lease required that the cafeteria space would be outside the area leased by the Government from Town Center. Is that correct?

Mr. TING. That is correct.

Mr. LEVITAS. That was based upon the language I just read from the Government's version of the lease?

Mr. TING. That is correct.

Mr. LEVITAS. So the Board found, based upon your contentions and evidence, that the lease contained a provision that said that the cafeteria shall be provided, excluded from the area covered by the lease, and the lessor shall assume full control of such space without cost to the Government or rental utilities or charges?

Mr. TING. That is right.

Mr. LEVITAS. I have no further questions.

Mr. McEwen?

Mr. MCEWEN. Mr. Chairman, I have just a brief one.

Mr. Ting, you may have covered this ground before, but what would you say to those who observed that, first of all, the Government failed to act here for a third of the lease; and then that it was perhaps incompetently submitted to the Board for a decision on their part; and then in order to secure the position that there really was no case, in order to cover that decision, it was not appealed? Is that a possibility here?

Mr. TING. To answer your questions one at a time, you asked do I have any explanation for the Government's inaction which led to the waiver, the estoppel and acceptance principle applied against the Government?

I don't have an explanation for that.

Your second question relates to whether the case was competently tried before the Board. I was there and I spent a year of my life on this case, and I have no reason to believe that the case was not correctly tried.

The third question relates to why didn't the Government appeal. My answer is if by appeal you mean take it to the Court of Claims or the district court, the Government's right at that time were precluded by a Supreme Court decision, *S&E Contractor v. the United States,* 406 U.S., page 1.

Why didn't we move for reconsideration? I have previously testified that in my capacity as Chief Counsel for Appeals, I read the decision in quite some detail. I knew it was an important case. I found no factual error in the Board's finding. I found no legal error in the Board's finding, and I made the decision that I didn't want to appeal just for the sake of appeal or just because I lost the case.

If I had moved for reconsideration, I would have had to have argued that the Board was wrong in its conclusion of law, that the findings of fact were not based on substantial evidence, or that I had newly discovered evidence which I did not have at that time. I still don't have any evidence that I didn't present at the time of the hearing.

Mr. McEwen. Mr. Chairman, under the question of the law, I would observe this as a fair contract case. Under the decision of the Board, as I understand it, they claimed the Government was estopped from pursuing.

What about the point that the chairman made yesterday, on the doctrine of estoppel against the State. Was a precedent found? I assume there was.

Mr. Ting. The Board apparently didn't feel that the doctrine of estoppel could not be applied to the Government. It is my understanding of the case law that when the Government stepped down from its sovereign capacity and entered in a contract in a commercial setting, that the Government had basically waived its capacity of a sovereign. Just because the Government is a sovereign doesn't mean that the Government is entitled to a different set of rules or a different set of laws than would apply to normal contractual transactions.

So I take exception to the statement that estoppel cannot be applied against the Government. I think the Government can be estopped. We can waive this by inaction.

Mr. McEwen. You say you know of no other cases that hold that, and none were cited by the Board, either. Is that correct?

Mr. Ting. Well——

Mr. McEwen. For estoppel running against the State?

Mr. Ting. Could I have your question again?

Mr. McEwen. Is this a fair conclusion, or is there precedent for this?

Mr. Ting. I think they cited several cases.

Mr. McEwen. They did?

Mr. Ting. Yes.

Mr. Levitas. Would my colleague yield at that point, and I again refer to page 43 of Mr. Ting's brief before the Board. I am not sure if the gentleman from Ohio has it in front of him, but Mr. Ting makes some very eloquent arguments on pages 43 and 44 on the point that the gentleman is pursuing, supporting the position which the gentleman from Ohio is suggesting.

Mr. McEwen. If I could pursue it from another angle, I am curious as to how it could be determined that the Government failed to take action at all, and thereby the principle of the doctrine of estoppel running against the State could be enforced if you had no contract.

As I understand you to say, since you had a contract, the sovereign was no longer sovereign and, therefore, it is merely two parties. But then, on the other hand, if you didn't have the contract, how would you have the inaction on the part of the Government?

Mr. **Ting**. But we do have a contract here. We have the lease signed by both parties, and, therefore, if we don't pursue our vested right, then we, you know——

Mr. **McEwen**. Either we apply the doctrine or we don't. The only way you can apply it is if you enter into a contract and one fails to perform. That is the only way that you can have estoppel in my opinion. If you had no contract——

Mr. **Ting**. I agree. I think we do have a contract here. What the parties obviously didn't read was one provision of that contract.

Mr. **McEwen**. Thank you.

Mr. **Levitas**. Mr. Molinari?

Mr. **Molinari**. I haven't had an opportunity to look at the lease. Was there any provision, as there is in many leases, that states that a failure on the part of either party to pursue remedies or rights under the lease would not be construed as a waiver or estoppel, to seek those rights?

Mr. **Ting**. Not that I know of in this lease. I have tried to pursue that argument in the context of another case before the contract of appeals. They didn't buy that argument.

Mr. **Molinari**. What I am asking is, was there such a clause in the lease that you tried?

Mr. **Ting**. No, sir.

Mr. **Molinari**. Let me ask you one further question. As a lawyer, have you ever tried a case that you didn't expect to win?

Mr. **Ting**. Very seldom. I normally have a feel as to what the result is going to be, and sometimes in the heat of a legal contest, I tend to ignore my own feeling about it and to pursue the case, but I have been surprised, yes.

Mr. **Molinari**. But you make a determination. I get the impression from the way you testified earlier, that you make a determination sometimes whether you are going to win or lose, and if you think it is not an open-and-shut case, you are going to make a determination not to try it because of losing credibility.

Mr. **Ting**. No. What I was talking about in that context was I don't want to appeal or move for reconsideration simply because I don't like the result.

When we go into a hearing, we are submitting the case to a third party for him to decide, and when I submit the case, I know that it may be ruled in my favor, or it may be ruled against me, and if the result is against me, if I think the Board or the court is wrong, if they are not applying legal principles properly, then it is my duty as a lawyer to move for reconsideration, to do the best I can.

I don't believe such circumstances existed in this case from my analysis.

Mr. **Molinari**. No further questions, Mr. Chairman.

Mr. **Levitas**. Mr. Stangeland?

Mr. **Stangeland**. Thank you, Mr. Chairman. Mr. Ting, so that I don't misunderstand, I questioned you on solicitation Offer No. 40 that was issued in 1970 as to whether or not you thought that was an important document. I believe you said that you didn't think it was important, but you did have a copy of solicitation No. 40 in your files while trying that case?

Mr. **Ting**. I don't recall specifically, but I would assume that I would have one, because as I recall now when I was preparing the case, I was trying to determine how the lessor could have had a different page 27 than the Government, and I basically conjectured at that point in time that maybe, just maybe, he had an old solicitation which he confused with the new, so I may have for that reason asked to look at the old version, solicitation No. 40, just to see how different that is from solicitation No. 55.

Mr. STANGELAND. Would you still have access to the files that you used to prepare your case, to be able to ascertain whether or not you had solicitation 40?

Mr. TING. Yes. The file is in our office.

Mr. STANGELAND. Mr. Trietsch, I think I asked you that question yesterday whether you could find solicitation 40, and I believe your response was that you hadn't seen it?

Mr. TRIETSCH. That is correct, sir.

Mr. STANGELAND. We assume it had been circular filed, based on a newer solicitation 55.

Mr. TRIETSCH. During my review which led to the 1980 Inspector General's report, as I testified yesterday, I did not have access to solicitation No. 40. However, I did carefully read the Board's decision in preparing my report. It would appear that, as you point out, solicitation 40 did exist and probably does exist in the files of the Board of Contract Appeals, or perhaps in Mr. Ting's files, but I did not see solicitation 40, because it wasn't precisely relevant to my report.

Mr. STANGELAND. So it may have been there, but you overlooked it, or——

Mr. TRIETSCH. I simply did not look for it, but I did look through all the files that I was provided with, and to the best of my knowledge it was not contained in those files. Now, whether it is in the files of the Board, files that I did not request, I am not quite sure.

Mr. STANGELAND. Mr. Ting, I think you made a statement that in the early 1970's, GSA did not require each of the parties to initial each page of the lease agreement, or was it a requirement at that time that was overlooked in this case?

Mr. TING. As I understand it, there was no such requirement at that time.

Mr. STANGELAND. But that requirement exists today?

Mr. TING. That is my understanding; yes, sir.

Mr. STANGELAND. Could you tell us how and where solicitations for GSA are prepared today?

Mr. TING. No, sir, I can't tell you that. I am not in that area.

Mr. STANGELAND. What is the GSA's policy with regard to withholding rental payments, and does GSA have a right to withhold rental payments?

Mr. TING. I have never researched that question, because my capacity is basically trial work. I believe Mr. Jack Mulligan, who will be testifying subsequently, will be able to answer your question on that point.

Mr. LEVITAS. Would the gentleman yield?

Mr. STANGELAND. Yes.

Mr. LEVITAS. I have before me a document entitled "General Provision Certification and Instructions, U.S. Government Lease for Real Property," which I am advised is incorporated into leases executed by GSA. This version is dated May 1970, and paragraph 15 reads as follows:

> In the event of failure by the lessor to provide any service, utility, maintenance or repairs required under this lease, the Government shall have the right to secure such services, utilities, maintenance or repairs and to deduct the cost thereof from rental payments.

Would that be applicable to this situation?

Mr. TING. We have discussed that. I think that basic clause requires the Government to take the action to acquire the services, utility, maintenance first and then to deduct the rent. In this particular case, we did not go out and get a cafeteria installed, so there is some question about the applicability of that provision.

I want the subcommittee to know that before the case was litigated, we did attempt to get the Board to issue an order for specific performance, because under the normal contract, the disputes clause says, "Pending resolution of the dispute, the contracting officer may direct the contractor to provide," whatever he wants him to provide, and failure to do so would be considered as a breach of contract.

We did try to get the Board to issue an order to enforce the specific performance. Unfortunately, the Board came down with a decision which says that this lease contains no changes clause, which would have been the vehicle by which the contractor would have been compensated if the Government eventually did not win its case.

Now, since the lease did not contain a changes clause, the Board says, "What if the government was wrong? How are we going to compensate the contractor for the installation of the cafeteria?"

So the Board did not grant my request for specific performance.

Mr. LEVITAS. I have just one last question, Mr. Ting, at this point. In your position now as Chief Counsel of the Appeals and Litigation Section, who is your immediate superior at the present time?

Mr. TING. His name is David W. Pelkey, P-e-l-k-e-y.

Mr. LEVITAS. And that is the person who was your superior at the time of this litigation?

Mr. TING. Yes.

Mr. LEVITAS. Prior to your testimony today, and subsequent to the time that you were requested to participate in these hearings, have you discussed your testimony with any official at GSA?

Mr. TING. I did not know the questions that were going to be put to me. I did have a meeting with some PBS officials who will be testifying before the subcommittee after me.

Basically, it was discussing what the case was about. It has been a long time, and some witnesses wanted to have their recollections refreshed, and I was up there. I have all of the exhibits that we submitted before the Board of Contract Appeals to the extent that anyone wanted to refresh their recollection, I provided them the documents. That was the extent of my discussion with GSA people.

Mr. LEVITAS. Have you discussed it with Mr. Pelkey?

Mr. TING. He was aware of the fact that I was going to come here to testify. He was aware of the nature of the hearing. He was aware of the substance of the decision, and I briefed him this morning after I sat in on the hearing yesterday.

Mr. LEVITAS. And that has been the extent of your discussion with Mr. Pelkey concerning this hearing?

Mr. TING. I also discussed it with the General Counsel this morning before I came up here to testify.

I also discussed the matter with the Administrator of GSA at approximately 9 o'clock this morning.

Mr. LEVITAS. I have no further questions. Mr. Stangeland?

Mr. STANGELAND. Mr. Chairman, just this: Our staff, Mr. Ting, has been trying to find solicitation 40 and have not been able to do so. I would request that you search your files and if indeed you do have solicitation 40, I would appreciate it if you would provide it for us.

Mr. TING. I would be very happy to.

Mr. LEVITAS. Thank you very much, Mr. Ting.

[NOTE.—The information to be furnished could not be found in Mr. Ting's files.]

Mr. LEVITAS. The next group of witnesses are officials of the General Services Administration. If they would come forward at this time, consisting of Mr. John F. Galuardi, Acting Commissioner, Public Buildings Service; Mr. John Mulligan, Assistant General Counsel; Mr. Earl Eschbacher, Director of Space Management Division; Mr. Arthur Barton, Director, Planning Division, Office of Space Management; Mr. Bernard Adamec, Chief, Design Evaluation Branch, Public Buildings Service; Mr. H. D. Harvell, Regional Administrator, Region 6, Kansas City, Kans.; and Mr. Robert Marcus, Director Concessions Division.

Gentlemen, if you would, come to the witness table and I will administer the oath.

Raise your right hands, please. Do you solemnly swear that the testimony you will give before the subcommittee this morning will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GALUARDI. I do.

Mr. MULLIGAN. I do.

Mr. ESCHBACHER. I do.

Mr. BARTON. I do.

Mr. ADAMEC. I do.

Mr. HARVELL. I do.

Mr. MARCUS. I do.

Mr. LEVITAS. I have been trying to figure out the best way to proceed, since obviously there is a lot of overlap and changing casts of characters—people playing different roles at different times—and I really haven't come up with a satisfactory solution.

My thought was to begin with Mr. Harvell, who, I understand from the testimony yesterday, was designated as the negotiator as they approached the conclusion of negotiations, or with Mr. Barton, who was the contracting officer.

That would be my proposal, unless one of you has a better suggestion as to who might put this matter in context.

Mr. BARTON. Perhaps, Mr. Chairman, I could draw a little organization chart on the board so you can see what the flow of command was—and we can go from there—at the time I joined the operating program.

Mr. LEVITAS. Would you do that, Mr. Barton? Since we are talking about a period of time, would each of you address the issue, and identify what your position was at the particular relevant period that we are talking about. I think it would be helpful.

TESTIMONY OF JOHN F. GALUARDI, ACTING COMMISSIONER, PUBLIC BUILDINGS SERVICE; JOHN V. MULLIGAN, ASSISTANT GENERAL COUNSEL, PUBLIC BUILDINGS DIVISION; EARL ESCHBACHER, DIRECTOR, SPACE MANAGEMENT DIVISION, NATIONAL CAPITAL REGION; ARTHUR BARTON, DIRECTOR, PLANNING DIVISION, OFFICE OF SPACE MANAGEMENT; BERNARD ADAMEC, CHIEF, DESIGN EVALUATION BRANCH, PUBLIC BUILDINGS SERVICE; H. D. HARVELL, REGIONAL ADMINISTRATOR, REGION 6, KANSAS CITY, KANS.; AND ROBERT MARCUS, DIRECTOR, CONCESSIONS DIVISION, GSA

Mr. BARTON. That is the organization as I remember it.

Mr. LEVITAS. What I would suggest you do, Mr. Barton, you see the microphone in front of Mr. Harvell? If you would, pick that up and use it.

Mr. BARTON. I joined Operating Programs sometime early in the summer—I forget the exact month—in 1971, in the position of the Acquisition Branch Chief in Space Management.

As I remember the organization of GSA at the time, and my colleagues can correct me if I am wrong, the Administrator was Mr. Kunzig, and the Deputy Administrator was Mr. Krieger, and there were other elements, such as the Federal Supply Service, but going to the Building Services, Mr. Art Sampson was the Commissioner and Mr. Sanders was the Deputy Commissioner.

Then we went to Operating Programs; Mr. Roush was the Assistant Commissioner and Mr. Harvell was the Deputy Assistant Commissioner.

As I recall, then, there were Special Projects, with Mr. Steele, and Mr. Adamec working for him. There was Design and Construction, with Mr. Packard as Division Director. I think it was Mr. Borg who was his Deputy Director.

In Space, Mr. Long was the Division Director and he had as Assignment and Utilization Branch Chief, Mr. Probst, and I was Chief of the Acquisition Branch.

Then we had the administrative function, which was several people engaged in orders, travel, and that sort of thing. That is about as I remember the situation in early summer of 1971.

Mr. LEVITAS. There will be, I guess, two general areas the testimony will relate to. One will be the solicitation and negotiations which led up to the contract itself; and second, the management of the lease after the contract was entered into and what happened from that point forward with respect to the cafeteria itself.

Mr. Harvell, yesterday it was testified that Mr. Shipp, whom we will be speaking to, or hearing from, at a later date, had been the chief negotiator in this particular lease, but that shortly before the lease was entered into, Mr. Shipp was removed from that responsibility and you were given the responsibility for continuing the negotiations that led up the lease, and in fact—am I correct that you actually signed the lease on behalf of GSA?

Mr. **Harvell**. I signed the acceptance letter, Mr. Chairman, but I was not delegated the authority or assigned the responsibility for continuing the negotiation.

I never did conduct any negotiations at all in this case. Mr. Shipp apparently had been in charge of negotiations, and when he dropped out, he may have assumed that I took over.

I arrived in Washington in January 1971 from Atlanta, and all of the negotiations apparently had been completed prior to my coming, or were being completed by Mr. Shipp or the negotiating team.

I was called by Mr. Shipp and asked to come and attend a signing ceremony in his office on the February date, and represent GSA and sign the acceptance letter, which I did. He indicated that had been cleared with my boss, Mr. Roush, and they were going to have a little ceremony, which they did, and the parties were there, and the signing took place.

I was handed the package at that gathering and told that all this has been negotiated, these are the letters, these are the places you should initial and sign on behalf of the Government, which I did.

Mr. **Levitas**. When you were first acquainted with this lease, or the negotiations that were then going on, were you told at any point about the issue involving the cafeteria before you signed the lease?

Mr. **Harvell**. No, sir, the documents were placed in front of me, in a big thick package. I did not read the document at the signing, and simply trusted those who were in charge and who presented me the package, and I don't recall any briefings or any discussions in depth or detail in terms of the agreements or the negotiations of that period.

Mr. **Levitas**. In connection with an investigation, an internal investigation by GSA which resulted in the report dated June 30, 1976, I am told that you are quoted as saying that you were knowledgeable about the cafeteria requirement and felt that it was a continuing disagreement between Mr. Bresler, head of Town Management, and GSA. Do you recall that?

Mr. **Harvell**. I acquired that after signing the lease and after arriving on the scene and as the project unfolded, I acquired that position.

Mr. **Levitas**. But at the time you signed the lease on behalf of the Government, were you unaware of the question or any issue over the portion related to the cafeteria?

Mr. **Harvell**. That is correct.

Mr. **Levitas**. Who was it that authorized you to sign on behalf of GSA?

Mr. **Harvell**. As I said, Mr. Shipp called me and indicated that that had been approved by my superior, Mr. Roush.

Mr. **Levitas**. Was that essentially the first you had ever heard of this lease?

Mr. **Harvell**. Yes. Yes, it was.

Mr. **Levitas**. What responsibilities did you have concerning the lease following that date?

Mr. **Harvell**. Only as my capacity in the Office of Operating Programs. The lease was signed, actually prepared and signed, in the Space Management Division by our leasing people. I signed the letter of acceptance at the ceremony, not the lease.

The lease was in fact prepared and signed by, I believe, Mr. Matt Long, in the Office of Space Management.

Mr. LEVITAS. Mr. Galuardi, what was your position during the time the lease was being negotiated and signed?

Mr. GALUARDI. I was the regional administrator of region 3 but the responsibilities for the design and construction of the Space Management of the then region 3 were removed before I assumed the duties of the regional administrator.

They were brought to the central office and put into the Office of Operating Programs and as such I was the regional administrator without these functions. I did not participate in the negotiations.

Mr. LEVITAS. Were all leases of the United States being handled in the Office of Operating Programs?

Mr. GALUARDI. I might explain that in the Office of Operating Programs were the functions of the then region 3 which is the Washington, D.C. and five States around Washington, D.C. They were brought into the central office.

Mr. Shipp was the head of the Office of Space Management in the central office which has a responsibility for policies, procedures and so forth, and as such the other regions have those responsibilities resting within their own organization within the region.

I might state that on occasions Mr. Shipp, having been a very superior negotiator, was brought in from his position in a policy and procedure location within the organization, and sent to take on special problems, special projects at times of negotiation.

Mr. LEVITAS. So, therefore, region 3 as such at that time was not involved either in the solicitation or preparation of the contract or negotiations that resulted in the lease?

Mr. GALUARDI. That is correct. However, when I resumed the duties of the regional administrator in 1975, the Office of Operating Programs was returned to the region at the time I returned and during that period the responsibilities for the contract administration of the contract would have been within the region 3 area.

Mr. LEVITAS. Do you know—does anyone at the table know—who, other than Mr. Shipp, was involved in the negotiation of this lease?

Mr. GALUARDI. I think it is in the record.

Mr. BARTON. It is in the record. As I remember the record, sir, it was testified that it was Mr. Shipp, Ms. Frankenfield, and Mr. Bagley.

Mr. LEVITAS. Now, Mr. Harvell, were you ever told why you were given the honor of signing this letter?

Mr. HARVELL. Only as Mr. Shipp advised at the time, concerning the signing ceremony. They wanted someone other than those that had been involved up to that point and someone at a higher level.

Mr. LEVITAS. Let me read to you part of what we had some testimony on yesterday.

It was testified that Mr. Bresler had accepted a proposal relating to this matter but subsequently—and I quote from the investigative report—"as a result of pressure by Kunzig, got GSA to delete the provision."

It went on to say that Kunzig had called Mr. Sampson, who was at the time in Puerto Rico.

Mr. Shipp is quoted as having said that Mr. Kunzig called him one morning while he, Shipp, was eating breakfast at the GSA cafeteria.

Mr. Kunzig was upset and rebuked him for being too aggressive in negotiating the lease with Bresler and that as a result he was subsequently relieved of his responsibilities for further negotiation of the lease.

Are you familiar with that?

Mr. **HARVELL.** I have no personal knowledge of that situation, sir.

Mr. **LEVITAS.** Mr. Galuardi, are you aware of any of that?

Mr. **GALUARDI.** From personal knowledge, no, none other than having read the investigation file.

Mr. **LEVITAS.** Mr. Barton?

Mr. **BARTON.** No, sir, I first became aware of the report yesterday at the hearings.

Mr. **LEVITAS.** So far as anybody at this panel is concerned the only persons who were involved in negotiations of that lease up to the time it was signed by Mr. Harvell were Mr. Shipp, Ms. Frankenfield, and Mr. Bagley?

Mr. **BARTON.** As I recall, sir. There may have been some other acquisition realty specialists involved but I can't remember reading their names anywhere.

Mr. **LEVITAS.** Who is Mr. Gaskins?

Mr. **BARTON.** Mr. Gaskins is retired from the Office of Space Management. When I returned to the central office a little less than 2 years ago, he was the Director of the Leasing Division in the Office of Space Management. He was Director at the time I arrived under the direction of Mr. Shipp, who was the Assistant Commissioner for Space Management.

Mr. **GALUARDI.** Earlier on, Mr. Gaskins was the Chief Acquisition Officer in the region 3 area.

Mr. **LEVITAS.** And John Spock was Mr. Gaskins' deputy?

Mr. **BARTON.** Yes, sir, I believe that is true. He is still in the Office of Space Management.

Mr. **LEVITAS.** Now, after the lease was signed, or the agreement was entered into, it is my understanding—correct me if I am wrong, Mr. Barton—that it was turned over to someone who became the contracting officer to manage that particular contract; is that correct?

Mr. **BARTON.** In those days, sir, when I assumed the duties as the Acquisition Branch Chief, I was responsible for the negotiations, also the execution of the contract documents, and also for the administration of the lease through the Office of Buildings Management.

As a matter of real practice, since throughout the country there are some 6,000 or so leases, once a lease is consummated it falls into the hands of the buildings management people for day-to-day supervision. If they have a contractual problem then they raise that issue with the contracting officer.

But when I got to that particular assignment, the lease had been negotiated; the day-to-day man on the spot while the construction was going on at Waterside Mall was Mr. Bernie Adamec and he devoted, as I understand it, his full attention to the prosecution of the delivery of the space. That was his major concern.

As the facts developed sometime later that year, toward the end of the year——

Mr. **Levitas**. End of 1971?

Mr. **Barton**. 1971, Bernie became very concerned about the delivery of the cafeteria on a phased basis. There were several meetings that took place and finally in his frustration because the cafeteria was not being delivered, people were moving into the building and there was no real place for them to eat, we issued the letter of February 28, as I recall the date, that Bernie had written, that the legal staff had concurred in, and that I signed as the contracting officer saying, hey, if you don't deliver this cafeteria we are going to withhold the rental for the space that we had already occupied.

That is a quick summation of the events as they occurred. You must remember that this office had between 900 and 1,000 leases that we were concerned with and we were in constant negotiation for new blocks of space, not just in Washington but in the five surrounding States.

Mr. **Levitas**. I understand that. One of the questions that we will get to eventually this morning or this afternoon is how many of these—how many leases did you say?

Mr. **Barton**. Somewhere between 900 and 1,000.

Mr. **Levitas**. One of the questions we will want to get to is, of that number, how many did the Administrator personally involve himself in?

But before we get to that point, Mr. Adamec, after the lease was signed and the construction was being continued and deliveries of space were being made to GSA, Mr. Barton says that you were sort of hands on day-to-day.

Describe how the question of the cafeteria began to unfold as far as your role was concerned and what you did about it. Who did you talk to?

Mr. **Adamec**. I had entered into the project in the spring of 1971 and the lease had been consummated, construction had already begun. At that time we had developed through the lessor a milestone delivery schedule of space incrementally to be delivered so that it could be occupied by the EPA employees. Our prime concern was the delivery of office space so they could utilize it.

One of the aspects of the lease, one of the aspects of requirements was cafeteria space, eating facilities for these employees.

In monitoring the progress of construction on a normal day-today basis I made weekly reports on general construction and general finishing of space and delivery of space. Toward the end of the spring-summer of 1971, making a comparative analysis of the milestone schedule, of the actual delivery of space, it became apparent to me that while office space was being completed and delivered there seemed to be no activity on the cafeteria space for eating facilities.

Mr. **Levitas**. Let me stop you right here. How did you know there was supposed to be a cafeteria? That is a naive question but there is some question as to whether there was supposed to be a cafeteria.

How did you know there was supposed to be a cafeteria there?

Mr. **Adamec**. Part of the leasing requirements were for eating facilities.

Mr. LEVITAS. You saw documentation with your own eyes that said there was going to be a cafeteria built?

Mr. ADAMEC. No, sir, I can't testify to that, that I saw documentation that says the cafeteria was going to be built. In my meetings with GSA officials, and with the lessor, eating facilities and space provided for EPA employees to eat was generally discussed.

Mr. LEVITAS. Who represented the lessor, what person or persons did you have these discussions with?

Mr. ADAMEC. We met pretty regularly, not every week but weekly with Mr. Bresler at Town Center and some of his employees, including the general foreman of construction and his general project coordinator.

Mr. LEVITAS. What are their names, do you recall?

Mr. ADAMEC. Mr. DePietro, Henry, was the general coordinator. The general contractor foreman I cannot recall his name.

Mr. ESCHBACHER. It was Virgil.

Mr. ADAMEC. Virgil was his first name?

Mr. ESCHBACHER. But I can't remember his last.

Mr. LEVITAS. So at these meetings in the late spring or summer of 1971, you began to ask the question at these meetings, hey, where is the cafeteria?

Mr. ADAMEC. That is correct, sir.

Mr. LEVITAS. What sort of response did you get?

Mr. ADAMEC. The response we got was that the lessor would provide eating facilities and he talked about a schedule of contracts he was negotiating for various eating facilities. I keep saying this term because that is what he used. He did not use cafeteria. Small restaurants, the size of sandwich shops. These reports are what prompted me to include that information in my weekly reports that I saw no activity, construction activity, for eating facilities taking place.

Mr. LEVITAS. OK.

Apparently you got to some point where it went beyond just these meetings that you were having with the lessor because, at some point, you took it up with Mr. Barton. Could you lead us into that?

Mr. ADAMEC. Well, as construction of general office space was being completed and personnel being moved in, the situation of the cafeteria became very acute. There were personnel there who did not have adequate eating facilities.

At that point it did not become a matter of just conversation and matter of concern, but a matter of deep concern.

Mr. LEVITAS. And you expressed this concern to the lessor?

Mr. ADAMEC. Yes, sir. In our weekly regular meetings; yes, sir. We got pretty much the same response, I am going to provide these eating facilities as soon as these leases are negotiated with the various vendors.

Mr. LEVITAS. And at some point in late 1971 you involved Mr. Barton in this situation?

Mr. ADAMEC. Well, I wouldn't say late 1971 because we did act pretty much as a close unit. It wasn't something that I kept to myself or reported weekly and then talked to him 3 months later.

As I was on the site almost on a daily basis, I communicated with Mr. Barton at least on a weekly basis and with Mr. Eschbacher from the Space Management Division who was at the site with me almost as much as I was.

Mr. **Levitas**. Mr. Eschbacher, during this period of time that Mr. Adamec is talking about, what conversations or efforts did you make with respect to providing this cafeteria?

Mr. **Eschbacher**. Personally I don't recall making any directly with Mr. Bresler about that particular subject. I was at the time a realty specialist in the assignment utilization branch of the Space Management Division and my job at that point was to coordinate the agencies moving into the space as it was being constructed to assure that the plans, the layout, and design for the interior space was done on time, coordinated with our fire safety people, and get it submitted to Mr. Bresler to have it constructed.

Mr. **Stangeland**. I would like to make a request that you bring the mike closer to you because it is very difficult to hear sometimes. Thank you.

Mr. **Levitas**. Now, Mr. Barton, at what point did the question become of such concern to you that you felt something had to be done? What was your frustration or the problem that led you to take the action resulting in that letter?

Mr. **Barton**. Sir, the letter was written or signed by me about, as I recall, February 28. So in the weeks immediately preceding that, Bernie had reached no satisfactory conclusion, the people in EPA were very concerned about the delivery of space, I reviewed the contract, there was no question in my mind at the time that paragraph 10(a), page 27, was a valid request for a cafeteria at no cost to the Government.

Bernie prepared the letter, and the lawyers then in GSA concurred in the letter and I sent it off on that date hoping that that would bring some positive and immediate action to alleviate the eating problems in Waterside Mall.

Mr. **Levitas**. Prior to the February 28 letter, you had written a letter on February 4. That was to the lessor advising of food inadequacies and citing the cafeteria lease provision as I understand it.

Then there was a second letter on February 28 where you said you got tough on the matter and said either you put in the cafeteria or we withhold the payments.

Mr. **Barton**. Yes, sir, as a result of long inaction and repeated requests verbally by Bernie and, as I recall, that letter on February 4, there was no real response to our request and at that point we wrote the letter, I signed the letter, telling him that he should deliver the cafeteria or we were going to withhold rental payments for the space we had already occupied.

Mr. **Levitas**. Had you had meetings or discussions with the lessor about this problem before you wrote the letter?

Mr. **Barton**. Sir, I don't recall meeting the lessor except on one occasion and that was subsequent to the issuance of that February 28 letter. I think that was sometime in May. I don't believe I ever met him again until the Board of Contract hearings in 1978.

Mr. **Levitas**. At any time did the lessor or any of the lessor's representatives say to any of you prior to your February 28 letter that there was no requirement in the lease to build a cafeteria?

Mr. **Barton**. Sir, I don't recall that issue rising until after that letter was sent.

Mr. LEVITAS. Does anybody who attended those meetings prior to February 28 recall at any time the lessor saying: "I don't have to build a cafeteria," Mr. Eschbacher?

Mr. ESCHBACHER. No, sir, I do not.

Mr. LEVITAS. Mr. Adamec.

Mr. ADAMEC. No, sir.

Mr. LEVITAS. Mr. Barton, before you get to the next juncture which was the response to the February 28 letter, which you said was cleared by your legal department, we heard testimony yesterday based on a report that has been issued by GSA, Inspector General, and other reports, that because of a reorganization of responsibility the authority or clout of the contracting officer had been diminished because of the transfer of responsibilities to the Assistant Commissioner for Operating Programs.

Could you tell us about that?

Mr. BARTON. Well, I don't believe that testimony actually conveys the situation. The Assistant Commissioner for Operating Programs up until a few months later, during the time of the issuance of my letter of February 28, was Mr. Roush and his deputy was Mr. Harvell.

But what had happened—I should also say that during that period of time there were many cross assignments where people were acting temporarily in various jobs and I believe, at least for those of us who were in subordinate positions, I believe they were trying to develop managers who could handle the many critical problems and they were experimenting on that basis. But Mr. Roush and Mr. Harvell could tell you more about that.

I know that I personally was not impacted. I stayed where I was until either August or September of 1972. But I think what they are talking about is that when Mr. Bresler raised the issue of the different pages and the contractual requirements and as I recall, there was also another case on the Nassif Building cafeteria at the time, that at that point in time high-level managers became involved in the negotiations and, in fact, met with Mr. Bresler resulting in the memorandums of March to buildings management that Mr. Harvell signed saying, hey, we have got to review this situation, we have to get a legal opinion, and it was followed by the letter signed by Mr. Roush to Mr. Bresler saying, in essence, until we finish our studies, disregard the letter of February 28.

At that point in time it was lifted from the contracting officer until those issues were resolved. I believe that is what it is. In essence, to the best of my recollection, that is the fact.

Mr. LEVITAS. Mr. Harvell, were you aware that Mr. Barton was taking the position that he took in the February 28 letter?

Mr. HARVELL. I think I was; yes, sir, the staff actions were known through the organization and I think pretty well supported.

Mr. LEVITAS. Now then, subsequent to Mr. Barton's letter, his tough letter saying either the cafeteria or we withhold rent, I think March 31, if I am not mistaken, Mr. Roush writes a letter to Mr. Bresler—no, it is April 19, saying in effect, we are rescinding what Mr. Barton said and we are not going to withhold rent until the whole matter has been reviewed. I wonder, Mr. Harvell, if you could tell us what transpired between February 28 and April 19 that changed or reversed the decision that had been made previously by Mr. Barton of which you were aware?

Mr. **Harvell**. To the best of my recollection, this is the period in which I believe the lessor had produced this different page of the solicitation and alleged that GSA in effect had fouled up in its issuance of the solicitation.

I believe that was the issue that was being considered there and the decision was made in that case that maybe we should review that situation and make sure of those allegations before we proceed.

We could have proceeded, I think, but if it had been a mistake on the Government's part, then we would have been liable for further suits on his part possibly from withholding rent or could have otherwise damaged the situation.

So I believe that was the circumstance and I believe that was what was being referred to, take a look at the allegation and research the matter and see where we stand before we proceed.

Mr. **Levitas**. Did you discuss this decision that resulted in the April 19 letter with Mr. Barton?

Mr. **Harvell**. I don't believe I did; no, sir.

Mr. **Levitas**. Who made the decision to reverse Mr. Barton's position?

Mr. **Harvell**. I suppose it would have had to have been Mr. Roush in his capacity. I did not make that specific decision myself.

Mr. **Levitas**. Do you know how Mr. Roush got involved in the matter at that point?

Mr. **Harvell**. How he got involved?

Mr. **Levitas**. Yes, I mean did he do it on his own so far as you know?

Mr. **Harvell**. I cannot recall. There may have been some meetings that he attended. I just cannot recall that detail.

Mr. **Levitas**. Do you know whether Mr. Sampson or Mr. Kunzig discussed the matter with Mr. Roush before that?

Mr. **Harvell**. I have no knowledge of that, sir.

Mr. **Levitas**. There was a meeting on March 30, 1972 between GSA and the lessor where Mr. Bresler produced a different version of the lease. Were any of you involved in that meeting?

Mr. Adamec, Mr. Barton, were you involved?

Mr. **Barton**. I don't believe so, sir.

Mr. **Levitas**. Mr. Harvell.

Mr. **Harvell**. No, sir, I was not.

Mr. **Levitas**. Tell us about that, Mr. Adamec.

Mr. **Adamec**. It was probably in the early part of March. I don't recall the exact date but I had called Mr. Bresler in to discuss specifically the cafeteria question and it was during that meeting in my office that he produced the different page of the lease solicitation.

On seeing that, I had requested Ms. Frankenfield, from the Office of Space Management, and although I don't recall, Mr. Marcus here states that I had asked him to come in, also. I had tried to ascertain from Ms. Frankenfield which page was the correct page in the lease solicitation, the one that was a normal one requiring a cafeteria or the one that Mr. Bresler produced which in fact waived or was different and did not require him to provide a cafeteria. I never did ascertain it. I was never able to get an answer from Space Management in any of my efforts.

Later in the month I had arranged a meeting between Mr. Bresler and Mr. Roush to try to resolve the difference and it was at that meeting that Mr. Roush had decided that we would pursue the matter or study the matter further before taking any specific action.

I think in my weekly progress reports dated March 31, I make a notation to that effect, that the lessor for Waterside Mall complex met with the Assistant Commissioner for Operating Programs in an effort to reconcile the differences of providing adequate food facilities according to lease requirements.

The meeting achieved some progress in resolving the Government's need according to our requirements and the issue will be further researched and hopefully totally resolved shortly.

In a subsequent weekly progress meeting dated April 14, I state that subsequent to a series of meetings with the lessor relative to the problem of food service facilities, the Government's position had been determined not to pursue action against the lessor until a complete study is accomplished and all legal aspects examined.

Mr. LEVITAS. That is April 14?

Mr. ADAMEC. That is the date of my report. It is not the date of any correspondence.

Mr. LEVITAS. Do you have your reports in front of you?

Mr. ADAMEC. A portion of them.

Mr. LEVITAS. The reason I ask it is that according to our key staff, page 33, the last entry date on there, is March 3, 1972. The next item we have in our possession of the status report sheets is page 35 which starts off by saying, "Continued from March 10." We do not have page 34 which would cover the period between March 3 and March 10. Do you have that available?

Mr. ADAMEC. No, sir, the next page I have after page 33 is page 36.

Mr. LEVITAS. Do you know where page 34 and 35 is?

Mr. ADAMEC. No, sir, I can't tell you. When I left the project and was transferred to another division, all the files that I had compiled were left with the project file.

Mr. LEVITAS. Has anybody ever seen page 34 or 35? I have 35 here. Mr. Trietsch?

Mr. TRIETSCH. No, sir, I have not seen those.

Mr. LEVITAS. Mr. Mitchell.

Mr. MITCHELL. No, sir.

Mr. LEVITAS. OK. Going back to the April 4 meeting, apparently at that time you were already aware of the fact that somebody in management had decided to reverse Mr. Barton's position; is that correct?

Mr. ADAMEC. April 4.

Mr. LEVITAS. I thought that is what you said.

Mr. ADAMEC. No, I said April 14——

Mr. LEVITAS. April 14?

Mr. ADAMEC. Yes, sir, that is page 38 of my reports.

Mr. LEVITAS. Page what?

Mr. ADAMEC. Page 38 of my reports.

Mr. LEVITAS. Where did you get that information? I see it here.

Mr. ADAMEC. Second paragraph on the 4-14 entry.

Mr. LEVITAS. Where did you get the information? You said that the Government's position has been determined not to pursue.

Mr. ADAMEC. In the meeting with Mr. Roush and Mr. Bresler in his office.

Mr. LEVITAS. And it was Mr. Roush, Mr. Bresler and you who were present at the time?

Mr. ADAMEC. That is correct.

Mr. LEVITAS. That you then learned that that was the position?

Mr. ADAMEC. That is correct.

Mr. LEVITAS. When did you convey that information to Mr. Barton?

Mr. ADAMEC. I believe immediately right after the meeting.

Mr. LEVITAS. What was your response or reaction, Mr. Barton?

Mr. BARTON. Sir, I was an employee of the General Services Administration; I could understand that our leaders would have some question about the legal aspects.

As the contracting officer, I thought they were clear. As a result of the review with my staff, including Ms. Frankenfield who had been involved in the negotiations, I thought the issue was clear. And I maintained it all the way through to 1978 where I cooperated as best I could at the Board of Contract Appeals hearings. In fact, my wife is still angry about the 3 weeks I spent in Washington when we were supposed to be on vacation. But my position was clear that the contract specified a cafeteria at no cost to the Government, and that should have been provided. I haven't changed that decision at all.

Mr. LEVITAS. The earliest date, then, that we know of at this moment that the lessor contended they didn't have to build the cafeteria would have been in March, March 2, 1972?

Mr. MARCUS. Excuse me, Mr. Chairman, I have documented in my files a record of a meeting on February 8, 1972, whereby he indicated that the firm he was negotiating with to operate the cafeteria had withdrawn from negotiations and by the way, he was relieved, by an exchange of letters, from providing the cafeteria facility and I recall Mr. Adamec making a frantic search of our files and I believe Mr. Bresler's files, for such a letter which was never found.

Mr. LEVITAS. I see. Here is a February 8, 1972 meeting involving GSA, EPA, and the lessor; and you were present at that meeting, Mr. Marcus?

Mr. MARCUS. Yes, sir, I was.

Mr. LEVITAS. Was there any discussion made about a cafeteria for EPA employees in that building?

Mr. MARCUS. Yes, sir, there was, Mr. Chairman.

Mr. LEVITAS. Could you explain that just a little bit? I gather that your responsibility as concessions manager was to be involved in that aspect of the program?

Mr. MARCUS. That is correct, sir. My office functioned as the technical advisor to the lease contracting officer. Several members of my staff had been involved during 1971, working directly with Mr. Adamec, and had attended several meetings.

In early 1972, early January, Mr. Adamec visited me and expressed great concern as to the lack of progress in getting the cafeteria considering the imminent move of large numbers of EPA personnel. So based on that I attended the following meeting personally which was February 8.

Mr. LEVITAS. OK. That is very important. During 1971, and early 1972, when you were working with Mr. Adamec on this project, was it your understanding that a cafeteria was supposed to be built by the lessor in this building?

Mr. MARCUS. Absolutely, Mr. Chairman.

Mr. LEVITAS. Did you attend meetings with representatives of the lessor where this was being discussed?

Mr. MARCUS. I did not personally during 1971, Mr. Chairman; however, at least two members of my staff did attend such meetings.

Mr. LEVITAS. Could you give us their names, please?

Mr. MARCUS. Surely; Mr. James Owen, who left GSA in late 1973, and now he works for the National Park Service in Denver, Colo.

Second, Mr. Daniel J. O'Connell, who retired in August 1979 from my office.

Mr. LEVITAS. So you were operating under the assumption there was going to be a cafeteria there and there had been meetings and discussions about it?

Mr. MARCUS. Yes, sir.

Mr. LEVITAS. OK. Now a meeting is held on February 8, and if you could—I realize it is a long time ago—but if you could, describe as best as you can recall what occurred at that meeting, who was present as far as discussions about the cafeteria were concerned.

Mr. MARCUS. There were representatives of EPA present, Mr. Adamec, Mr. Bresler, Mr. DePietro, and myself. There may have been another representative of my office. I frankly can't recall. But the thrust of it was to induce Mr. Bresler to expedite the installation of the cafeteria and at that point he clearly mentioned that his negotiations had fallen through with his operator and that he had been relieved of the requirement to provide a cafeteria by an exchange of letters specifically.

Moreover, he did indicate that there would be a variety of commercial restaurants, several had been operational at that point in time, and he did promise a significant number of additional commercial eating facilities.

Mr. LEVITAS. At some point, then, Mr. Bresler was apparently negotiating with someone to operate this cafeteria, but those negotiations had fallen through and he was having difficulty getting somebody else to do it?

Mr. MARCUS. That is correct, sir. In fact, my notes documenting meetings held during 1971 indicate the names of at least three firms.

Mr. LEVITAS. Have you furnished those names to our committee staff?

Mr. MARCUS. Yes, sir, we have.

Mr. LEVITAS. OK.

Mr. MARCUS. Excuse me, I believe we have. Our files were transmitted to the National Capitol region and I have them here and they were furnished through to our investigators and hopefully to your subcommittee, sir.

Mr. Stangeland. At this February 8 meeting, the most senior person from GSA was yourself, Mr. Adamec?

Mr. Adamec. Yes, sir.

Mr. Stangeland. Is it not customary when you are a project supervisor—is that a correct title to apply to whatever role—you are on the project day-by-day in any event. Would it not be appropriate for you at that time and through that supervision to have a copy of the lease to be aware of what the full requirements are within the lease?

Mr. Adamec. I would think under the terms that you are talking about, probably yes, as project supervisor with day-to-day supervision, but that really is not or was not my function.

My function was overseeing the progress of the construction of the particular project and to report the activities, because I was on the site more than anybody else and was most familiar with the construction project progress; I would naturally assume the leadership role in any of the meetings.

Mr. Stangeland. But you clearly understood that a cafeteria was a requirement of the lease.

Mr. Adamec. It was my understanding that a cafeteria was required; yes.

Mr. Stangeland. When the lessor advised that the cafeteria facility would be eliminated because of his prospective operator withdrawing, what was your action then? What did you do when you heard that?

Mr. Adamec. When he did say that and he also said that his requirement for a cafeteria was waived by letter, my immediate reaction, after advising the space management people back at GSA, was to find this waiver, this letter, and that was——

Mr. Stangeland. When you advised GSA, did you advise Mr. Barton?

Mr. Adamec. I advised Mr. Barton through Mr. Eschbacher. And I had searched our files and made an effort to go through our files to find such a waiver. There was no letter.

I did in fact make a conscious effort to go through the lessor's files, not personally, but through his secretary, his executive aide. She looked through the files and couldn't find such a waiver either.

Mr. Stangeland. And it was about that time then that you took the action, Mr. Barton, of sending the February 28 letter?

Mr. Barton. I am not sure, but I think it was after that, but I am not sure exactly of the chronology of events. But I know that I was advised that the lessor was representing that the facts as we understood them with our contract were not the same as the facts that he had. That there was in fact a different page in the solicitation. I called my people together, researched the file——

Mr. Stangeland. The different page appeared at this time or did it appear—I understand it appeared after your February 28 letter.

Mr. Barton. I believe it did, sir. At that time we researched the whole thing. I became confident that our solicitation and the addendums to it, which included the various amendments to his contract and the award letter, that as far as we were concerned sealed the contract, since we had an offer, an acceptance, and delivery, and we had that in our possession, that his representations were not factual.

That position was my understanding, it was my belief—and I subsequently testified to that 6 years later.

Mr. **Stangeland.** Thank you.

Mr. **Levitas.** I think the point that my colleague makes is a very important one. As I understand the chronology, at the February 8 meeting, Mr. Bresler said, No. 1, the cafeteria negotiations had fallen through, we don't have anybody to operate it. No 2, that the requirement for the cafeteria in any event has been waived by these letters.

I might add by way of footnote here, I am told that in subsequent testimony before the Board of Contract Appeals, Mr. Bresler contended that the alleged waiver was made orally rather than in writing. I just put that out so we have it in context and we will get the documentation to put it in later on.

Subsequently, not at the February 4 meeting but following your letter, Mr. Barton, on February 28, for the first time we get a contention that it was not in the contract at all.

Mr. **Barton.** I believe that is the way it happened, sir.

Mr. **Levitas.** But on the February 8 meeting, the context wasn't that it was in the contract but rather that: (a) operator for the cafeteria had backed out, and (b) the requirement had been waived by a letter. I just wanted to get that chronology. I think it is important that we do that.

There is a vote in progress on the floor at this point. We will have to take a recess. The subcommittee will stand in recess until 1:30.

[Whereupon, at 12:50 p.m., the subcommittee was recessed, to reconvene at 1:30 p.m. the same day.]

AFTERNOON SESSION

Mr. **Levitas.** The subcommittee will please come to order.

Mr. Stangeland?

Mr. **Stangeland.** Thank you, Mr. Chairman.

Mr. Harvell, looking at that chart, I would presume that in the timeframe we are looking at that it is in the early 1970s, 1971, 1972. Would you be the senior man at that time in the Public Buildings Service, represented here?

Mr. **Harvell.** No, sir. Mr. Roush.

Mr. **Stangeland.** No, no. Of the people represented here, you would have been the senior member then?

Mr. **Harvell.** In that office, yes, sir.

Mr. **Stangeland.** I would like to see if we can determine why the policy was made here in this region to establish the Office of Operating Programs. Can you give us some kind of explanation of how that evolved, how that came about, what discussions or negotiations? I believe it was initiated late in 1970, if our information is correct.

Mr. **Harvell.** I was not here at the time that was done, sir. I was in Atlanta. I believe Mr. Galuardi might be able to offer more on that.

Mr. **Stangeland.** If someone could shed light on how that happened and why.

Mr. **Galuardi**. I am not so sure why it happened. The Washington, D.C. area was about one-third of the problems in space matters of GSA at the time. A new administration had come in at the time—Kunzig and Sampson. I think they wanted a better handle on the buildings being constructed here in Washington, D.C., and the fact that there were a lot of space requirements in Washington, D.C. to be handled, they wanted it closer to the Commissioner of Public Buildings Service. Therefore they brought into the policy organization in the central office this operational arm, and put it under the Commissioner of the Public Buildings Service.

It, incidentally, is a management principle which gets kicked back and forth every so often in GSA as to whether or not the Washington area should be out there as an operational arm or in the central office as an operational arm, so it is not just unique to that time that it happened, but it did happen that it was actually transferred.

Mr. **Stangeland**. When did the initial discussions and considerations to make this change take place? Was it late in 1970?

Mr. **Galuardi**. I wouldn't be able to answer that, because it was done by the Administrator and the Commissioner of Public Buildings Service. They were the only two.

Mr. **Stangeland**. They are the ones who would have to answer that question. Subsequently, it has been reverted back to the region, like any other region?

Mr. **Galuardi**. In 1975, I believe it was, when I returned to the region to be the regional administrator, one of my requirements was that the operating programs would go back there with me.

Mr. **Stangeland**. I assume that the central office took it a step or two removed from the people in the field who have a better grasp and knowledge and understanding of the problems——

Mr. **Galuardi**. Not really, because these were the field people, and they were brought closer to the Commissioner, so that there was less layering between them.

Mr. **Stangeland**. So what you did was take the regional people who had been doing the work and promote them into the central office?

Mr. **Galuardi**. Yes.

Mr. **Stangeland**. I see.

Mr. **Galuardi**. What he was reminding me of is that the Washington Region has been split. It is the Washington Standard Metropolitan Statistical Area, and the counties. The other five States which were in the region are now a new region up in Philadelphia.

Mr. **Stangeland**. They are operated out of Philadelphia. I will pursue this further, but we will have to wait until we get the other witnesses, Mr. Chairman.

Mr. **Levitas**. Thank you, Mr. Stangeland.

Mr. Harvell, other than this instance of the Waterside Mall, during the period of time that you served as the Deputy in the Operations Program Management, on how many occasions were you aware that the Administrator or the Commissioner of Public Buildings got involved in either the negotiations or management of a lease?

Mr. **Harvell**. I am not aware of instances of negotiation, to my personal knowledge. I would say that there were a number of projects during that period of time and probably subsequently, even of later or more recent vintage, that were sensitive, or large enough, or had other kinds of involvement, such as establishing a new program or a new office, or a headquarters, or something of that nature, where there was possibly involvement in the management or direction in terms of priorities, and so forth, of that some other projects of high value or high exposure that were probably similar.

Mr. LEVITAS. What is your understanding of the reasons which led to a decision in April of 1972 not to insist at that time on construction of the cafeteria?

Mr. HARVELL. I am not aware of any such decision as a conscious decision.

Mr. LEVITAS. In the April 19 letter, and in the discussions that led up to that April 19 letter, the statements were made and the position was taken that the matter of the cafeteria would be dealt with or looked at and all aspects considered and in effect get around to it later on.

I guess, Mr. Harvell, you might be the one, or maybe Mr. Barton might be the one, to tell us what occurred after April 19, between April 19 of 1972 and 1975, with respect to resolving GSA's position on the cafeteria.

Mr. BARTON. Well, sir, I was directly connected as the Acquisition Branch Chief until late summer or early fall of 1972, and during that time the allegations of the lessor that he did not have to provide a cafeteria, and of a different page in the solicitations, those discussions were taking place between the assistant commissioners, both Mr. Roush and Mr. Zechman, who succeeded him, based on the legal issues involved, as far as I know, and a decision was not rendered, nor was the April 19 letter revoked, to my knowledge.

Mr. LEVITAS. Mr. Harvell, I have a note here that on May 2 you received a letter from Building Management concerning their understanding that the lessor in his prior meetings with them had reflected an awareness of the requirement for the cafeteria. That is on May 2, 1972. Are you familiar with that memorandum that you received?

Mr. HARVELL. Yes. I have it here.

Mr. LEVITAS. Who sent you that memorandum?

Mr. HARVELL. It is signed by Mr. Innamorati, Commissioner for Buildings Management.

Mr. LEVITAS. What was your response? How did you react to that letter?

Mr. HARVELL. This letter was sent to the program people, Special Projects, Mr. Adamec, and copies, I see here, went to Mr. Barton's area for processing, and for response.

Mr. LEVITAS. What does that mean?

Mr. HARVELL. That means that the program people would have prepared responses or taken action according to this letter, as necessary.

Mr. LEVITAS. So in May, following the April 19 letter, there was still an awareness on the part of the people in Buildings Management that this cafeteria matter needed to be addressed? Is that the substance of that?

Mr. HARVELL. I think so, yes, sir.

Mr. LEVITAS. Now, Mr. Marcus, on May 25, you rendered a report based on a meeting between GSA, EPA, and the lessor, which related to the cafeteria question. It seems to me that the question related to the size of the cafeteria rather than whether there would or would not be a cafeteria. Could you sort of describe that?

Mr. MARCUS. Certainly, Mr. Chairman. There had been a meeting on May 22, involving the lessor. Shortly prior to that time, at the request of Mr. Adamec, I believe, we had conducted a current study of the then existing food facilities in the Waterside Mall complex in consideration of those we thought were under development or in the planning stage.

Based on the study and a careful review of its implications, we concluded that the size of the cafeteria could be reduced from 13,000 square feet to 10,500 square feet, to include a seating capacity reduction of 450 to 350.

We felt, sir, this was significant to the lessor as an inducement to him to facilitate getting a qualified cafeteria operator for the cafeteria in question.

Mr. LEVITAS. So in May of 1972, over a month after Mr. Roush had written to the lessor about not withholding rent there were still discussions going on about building the cafeteria?

Mr. MARCUS. That's correct, sir. In fact, he indicated in the May 22 meeting that he was negotiating with a minority food operator, whom he felt could benefit from SBA loans and other advantages to operate the cafeteria.

Mr. LEVITAS. Now, Mr. Mulligan, in the middle of August 1972, we have information that the General Counsel recommended, or gave a recommendation regarding the legal status of this issue to the Office of Operating Programs. According to my information, that report said that the lease did require the lessor to provide the cafeteria facility, and suggests refusal to occupy space, and so forth.

Could you describe how that came about? Why? What caused that report to be given?

Mr. MULLIGAN. I have no recollection of that report. I assumed the position of Acting Assistant General Counsel on July 1, 1972. When I got involved in this, I believe it was late 1975. Referring to this hearing, I researched the files to find such advice, and I couldn't find it.

I learned from Bernie Adamec, who is on my left, that he had talked to Howard Schechter in the office, and Howard had advised him that he could not reduce the rental because of the failure to provide the cafeteria, but advised him that a cafeteria was required.

I also asked Hal Valkenberg, who was in the office at the time, and whose responsibility was to advise the leasing people, what his involvement was. He does not recall the memorandum that you refer to. He does recall one meeting during that time period, however—he wasn't precise as to date—in which the matter was discussed, and checking with Hal Valkenberg, everyone assumed a cafeteria was required, and when I say a cafeteria, I mean a cafeteria described on page 27 of the solicitation.

Mr. LEVITAS. And you say that although you assumed your position as counsel in July of 1972, you really didn't get involved in this matter until 1975?

Mr. MULLIGAN. That is right, sir. On June 30, 1972—the office at that time had about nine lawyers in it, and on June 30, 1972, the three senior lawyers in the office retired, and I think that day I was No. 4 on the totem pole. I came in the next working day and found out I was in charge.

I did not find anything on Hugh Preston's desk—he was my predecessor—on Waterside Mall. I have no recollection of having discussed Waterside Mall with anyone until, I don't know if it was late 1975 or early 1976 when the matter surfaced again.

Mr. LEVITAS. According to our information, that August 1972, General Counsel's position has been discussed or noted in the GAO report, and also it was referenced in the project manager's weekly report.

Mr. MULLIGAN. Right. I looked at the project manager's weekly report in getting ready for today's hearing and that is where I have seen reference to it.

Mr. LEVITAS. That is where you saw reference to it?

Mr. MULLIGAN. Yes.

Mr. LEVITAS. Now, Mr. Barton, who would the person have been at GSA between April 19, 1972 and 1975, who would have had the responsibility of seeing that some resolution, something was done one way or the other, about the matter that was held in suspense? Was it your successor, or would it have been Mr. Harvell?

Mr. BARTON. Sir, as I recollect the facts, the negotiations were continued when Mr. Roush went on to another assignment with Mr. Zechman, who replaced him, and those discussions still took place between the lessor and the Assistant Commissioner, the contracting officer, myself, when I was there, and my successor would be the ones responsible.

In this case, the contracting officer's intention was overruled by the Assistant Commissioner's letter, and the negotiations after that were between the Assistant Commissioner and the lessor, and I have no knowledge of it getting back to the contracting officer.

Mr. LEVITAS. I have a note here that in August 1972 there was a letter apparently prepared by you, but never signed.

Mr. BARTON. That letter was another contracting officer's decision, sir. It was prepared for my signature. I believe Bernie had it written, or wrote it. We still believed at that time in our discussions that the proper course of action was to take that contracting officer's decision, and force the lessor to build the cafeteria, or have it built.

There was some question about the legal right of us to do this. I believed that we should pursue that action, but it was never pursued.

Mr. LEVITAS. OK. Mr. Harvell, you were serving first as deputy and then subsequently as Assistant Commissioner during this period of time. There was the position that had been taken by the contracting officer, Mr. Barton, the august, apparently verbal, position of the general counsel. What was done or not done during this period of time to move forward with the resolution of the cafeteria matter?

Mr. HARVELL. My best recollection is that there were a lot of things going on and a lot of factors during that period. The lessor apparently continued to resist all the efforts to put in a cafeteria, or that is what I understand.

Efforts were continuing at that time to get other kinds of food facilities in there, according to my recollection, in the form of other kinds of commercial facilities, and apparently there was some progress in that regard all during the course of that period.

It is my recollection that there were meetings off and on during that period of time with the lessor and he would make certain promises to provide commercial facilities, and there would be certain dates set, and we would wait and some would come on line and others apparently did not.

But there were a number of things during that period of time that were going along in that regard.

Mr. LEVITAS. Mr. Stangeland.

Mr. STANGELAND. Mr. Adamec, what was your role in this same timeframe that the chairman is referring to, late 1972—I am sorry—April 1972 to mid 1975? What was your position?

Mr. ADAMEC. Basically, my position was still the same. I was overseeing the construction progress, and during that time, in late April, the late spring of 1972, I did arrange further meetings between Mr. Roush and officials of EPA, and the lessor, Mr. Bresler, to try again to bring it to a head and resolve the issue.

During that meeting, Mr. Bresler had promised to open three restaurants within 120 days. I guess this timeframe when he made that commitment was some time in May or June 1972, which gave him until September 1 to open it up.

That meeting was concluded so that we would see what happened by September 1, that is, if these restaurants were opened up, and if in fact they did help alleviate the eating facility problem.

I might add, though, that at that point in time the construction schedule became acute in that EPA was planning to move approximately 600 additional employees into the complex on or about Labor Day, September 1, so the main emphasis really became delivery of office space so that the employees could be housed without relinquishing any of the emphasis on the cafeteria or eating facility.

Mr. STANGELAND. So while Mr. Barton wrote a letter recommending withholding of rent, subsequently overruled by superiors, it was still not appropriate for either of you to follow up with your superiors, pushing for a resolution of the cafeteria problem. I understand you did this into late 1972, but in 1973, 1974, and 1975, did you continue to push your superiors to solve the cafeteria problem?

Mr. ADAMEC. I can only speak to 1973, when I was transferred and placed into another position, but up to that time, yes.

Mr. STANGELAND. Would you care to comment on any problems with EPA's urgent need of space for people and that being an overriding issue, as opposed to providing food service for them?

First of all, get them in a building where they go to work, and second, find something to nourish them with?

Mr. ADAMEC. I wouldn't go so far as to say overriding issue, but, yes, it became an important one. Our prime responsibility was to deliver space for EPA to work in, office space. Eating facilities are an adjunct function. We were to deliver that as well.

At that time, again, in the summer of 1972, the timing and the scheduling were becoming acute because more and more EPA personnel were being moved into the building and we had to provide adequate office space for them to work in.

Mr. STANGELAND. Was the lessor aware of the pressure you were under from EPA for that office space?

Mr. ADAMEC. In my opinion, yes, I am sure he was.

Mr. STANGELAND. Was there a way he could use that to continue his foot dragging and appeal to your superiors that he needed to concentrate on providing the office space as opposed to providing the cafeteria?

Mr. ADAMEC. I am sure he could use that ploy, but to my knowledge he never specifically used those words or that excuse.

Mr. LEVITAS. Mr. Fary.

Mr. FARY. No questions.

Mr. LEVITAS. Mr. Molinari?

Mr. MOLINARI. No questions.

Mr. LEVITAS. All right. Apparently sometime between 1972, late 1972, and sometime in 1975, specific efforts directed toward getting the cafeteria built don't appear in the record, and I would just like to get it clear, from Mr. Harvell. Do you know of any efforts made to get the legal requirement for the cafeteria to be met and, if not, do you know why it wasn't done?

Mr. HARVELL. My recollection is that those efforts were continuing. Mr. Zechman, who was the Assistant Commissioner, who was my superior, I recall, actually held a meeting—I don't remember the exact date, but it was in that timeframe of 1972—late 1972, or maybe 1973 late—I can't recall the dates—but in an effort to try to force that issue with the lessor.

Mr. LEVITAS. Mr. Eschbacher, what about your activities in that regard?

Mr. ESCHBACHER. Well——

Mr. LEVITAS. You became contracting officer at some point.

Mr. ESCHBACHER. In 1974, mid to late 1974. At some time prior to that, and I don't have the dates, either, I was transferred out of that particular responsibility and I became a leasing specialist over in the acquisition branch in a specific geographical area, metro Maryland at that time, so I was removed from day-to-day contact with Waterside Mall. I believe that was in 1973.

Mr. LEVITAS. What I am trying to get a handle on is this: During 1971 and up to the middle of April 1972, and to a lesser extent during the late spring and summer of 1972, there were varying degrees of significant interest in this cafeteria situation. It became hotter and cooler, but it was there, and efforts were being made. Then between 1972, between late 1972 and some time in 1975 or 1976, nothing seems to have really happened. The shift appears to go from getting the cafeteria built to what other eating facilities are going to be in the Waterside Mall, which is a different issue altogether. I am just trying to get a handle.

What happened? Did somebody just lose interest in the matter, or give up, or just what? You know, Mr. Barton, you and Mr.

Adamec in particular, to you this must have been a very frustrating experience.

Mr. **Barton**. Sir, I can only tell you what happened in terms of what our procedures were, but let me explain that much so that at least you will understand that.

When a space becomes occupied on a leased building, just as in a Government-owned building, there comes that point in time that the space is occupied, that the function is transferred to the local buildings manager for the day-to-day management and operation of the building, and from him flows all the requests that are necessary for action by the leasing contracting officer. I was here yesterday when EPA testified that their last letter was, as I recall, some time in December 1972, and there wasn't another letter until October 1975, as I recall their testimony, and during that time, of course, the leasing officers and contracting officers had changed many times. In the absence of any direct complaint they probably just were not aware of it, and that is not unique to this particular cafeteria situation or this leasehold interest, but it is our procedure throughout the Nation.

However, most people who have a dissatisfaction are very vocal about registering it with GSA.

Mr. **Stangeland**. After the letter of February 28, apparently, Mr. Bresler came in with a different lease from the lease that GSA had, a different page 27. At that time, can anyone tell me how carefully GSA went back and reviewed their lease?

I would just point out some things, what I think are ambiguities, and I would expect GSA had to be flabbergasted.

First, by the letter of acceptance, the cafeteria is to be placed in operation and expanded as additional space was needed. Service that would be deemed adequate would be determined by consultation between the Government and the lessor.

Under the "special requirements" section of the February 12, 1971 amended offer from the lessor, it states the cafeteria will be provided in accordance with paragraph 10(a) of schedule B, Part III, of the offer—and that refers to the GSA solicitation No. 55 stating the cafeteria shall be at the expense of the lessor.

Also under that "special requirements" section it states that all special requirements, and so forth, shall be provided where practicable at actual cost, plus 10-percent overhead and 10-percent contractors profits.

Now, that is an awful lot of muddy stuff in there as to who is liable for what and at what cost. At that time, after the attorneys have carefully scrutinized this lease, wasn't it a fact that GSA really didn't know where to go and what to do, and so they just kind of sat?

Mr. **Barton**. I can respond to what happened when we were told that there was a different page 27, because that immediately came to my attention. I assembled the people in my branch who were involved in that case, including the lady who had been through the negotiations. I was assured that it could not have happened, that there was no substitute, that the solicitation that had been presented to Mr. Bresler during the negotiations including page 27 with the 10(a) provision that the cafeteria be provided at no cost to the Government.

I did not change from that reaction. In fact, in March we prepared a memorandum to buildings management, which never got sent, in that form, which reiterated our position that that cafeteria was due to the Government, and that we should pursue it.

Mr. STANGELAND. Are you assuming, Mr. Barton, that because of the wording in the special requirement cafeteria, referring to section 10(a), that that negates the cafeteria from being considered under that part of the special requirements relations to costs?

Mr. Barton. Sir, I thought paragraph 10(a) itself specifically overrode those other special requirements, which were other kinds of things that had to be provided in the leasehold interest.

I so testified several years later at the Board of Contract Appeals, that I believed 10(a) was clear, it pertained particularly to the cafeteria, the cafeteria requirement had not been met at that time, and to my judgment had not been met even to the time of the Board of Contract Appeals hearings.

Mr. STANGELAND. Do you have any idea, or does anyone want to comment who was superior to Mr. Barton at that time?

Mr. ESCHBACHER. Sir, I wasn't superior to Mr. Barton, but I do remember in talking back and forth here that there was more than one cafeteria being discussed for EPA in the initial occupancy of that building.

There was the cafeteria under 10(a), and there was also an executive cafeteria which was a requirement of EPA up front when they were going to occupy the building, which never came to pass, for their top-level executive staff, and my own feeling is that the cafeteria requirement under "Special" was what we really thought was the executive cafeteria, a smaller facility.

Mr. LEVITAS. Before I go into one last portion of this part of the story, let me tell you what it seems like to me just from what I am hearing at this point. After approximately August of 1972, when the contracting officer had drafted a subsequent letter calling on the lessor to provide the cafeteria and Mr. Adamec is still trying to produce documentation about the waiver that the lessor claimed—from that time forward until 1975, the whole idea of the cafeteria really got dropped.

Now, that is the way it seems to me, based on the paperwork that I am looking at. I wonder, Mr. Trietsch, or Mr. Mitchell, is that basically your analysis of what is in the record?

Mr. TRIETSCH. Yes, sir, I believe that that is accurate, insofar as the record is concerned.

As I testified yesterday, there is obviously a 3- or 3½-year gap there with respect to the documentation as to what happened, and as you correctly point out, there was probably a waning interest in the cafeteria during that post-August 1972 period.

Mr. LEVITAS. Would you concur, Mr. Mitchell?

Mr. MITCHELL. Yes, I basically concur with that.

We went by the project files. We looked for all the documentation we could, and it just absolutely stopped along then. We saw that there was no record of any discussions regarding the cafeteria during that time.

Mr. LEVITAS. Mr. Barton makes the point that about the time that EPA was occupying that facility, that the building manager would be the one who would primarily have been receiving the complaints of the EPA not having a cafeteria.

The building manager was a person who was in region 3. Now, has anybody made any effort to ascertain what their records show?

Mr. GALUARDI. I haven't.

Mr. LEVITAS. Mr. Trietsch?

Mr. TRIETSCH. No, sir. We did not, in our review.

Mr. LEVITAS. That might be an area that we ought to take a look at to see whether the records of the building manager indicated any communications from EPA saying, "Let's get checked up on this cafeteria." I would like to see that.

But leaving that possibility aside, Mr. Harvell, the responsibility for this whole matter was moved up to the operating and programs management.

Mr. Barton and his successor, Mr. Adamec, are saying that there is a cafeteria that is supposed to be built and it is not being built. Mr. Roush says we are not going to insist on it at this time, but we are going to get around to it later on, and then with the matter now resting in that office, it just seems to go away.

Mr. HARVELL. There are a number of factors, I think, that have already been alluded to that I think, in fact, bore on that situation and had an effect on the situation.

By moving into the space after the space was completed, the agency started to settle down a little bit, and I think they did tend to pull out in terms of their continuing complaints. I think the record shows that.

The operations shifted to region 3 some of that responsibility. The continuing eating facilities that were coming into the Waterside area I think probably also impacted on that situation of the lessening of the urgency that previously had existed. I think the lessor's position at that time remained unchanged, and we were still wrestling with him throughout the system to try to get something.

I think there might have been a great deal of frustration and obvious confusion throughout the system at that point, as you suggested, and I think that, also, there might have been a feeling that maybe we should just keep pressing for something in order to get the agency settled and into their space.

So I think there are a lot of factors. I might add one other thing that I think might have impacted on this situation, maybe more so than anything else, and that is the fact that there were a number of personnel changes, that Mr. Galuardi alluded to here, in various departments of our operation. New people had to pick up on old cases. Obviously that took some time to get up-to-date on.

But I think there are a number of factors that could—and this is my speculative opinion—that could have impacted or caused that lull.

Mr. LEVITAS. But one of the purposes of these hearings is to make certain this doesn't happen again, anyplace, anywhere, anytime, because if there was a contractual right that the Government had, even if it was proper in the first place not to force it in the beginning—and I have my own opinion—but it was certainly a matter of unfinished business that disappeared off the agenda. There was no tickler in the file for every 30 days that said "Mr.

Harvell, you have got to do something about this lease," or "What about the cafeteria?"

People at EPA, I assume, Mr. Ruckelshaus and that crowd, were moving in and trying to get their operation going and dealing with complaints of people about some place to eat. But the cafeteria had sort of drifted away in preference to other items on the agenda. But at GSA, the lessee of this facility, or the agency that had made the contract with the lessor—the right of the Government was still there and nobody did anything about it. That's the way it seems to me.

Mr. HARVELL. I think they were doing things. They were probably not successful, and maybe to a lesser degree and with less intent than they had in the past, but I don't think that they were not doing anything. I don't think it had totally gone away.

It ultimately did recur, of course, and something was done, but I don't think it went away. I think the culmination of all the things that were there, as I say, probably caused a period of time when probably not as much was done as had been done.

Mr. BARTON. You may remember, Mr. Chairman, that those were rather exciting years in Washington, D.C., and GSA in the small-leasing operation had a lot more to do than just one cafeteria. The space for the special prosecutor occurred at that time, and that was a crash action. The wage and price control, too. We had 6 weeks to set up space for the wage and price control. There were many, many things going on at that time. The pressure in an ordinary leasing operating, the pressure is tremendous. There are constant events going on all the time.

Mr. LEVITAS. But the implications of that, Mr. Barton, are that it could happen again. I am going to get to Mr. Galuardi as the Acting Commissioner now to find out what you have in your system to stop this.

Mr. Stangeland.

Mr. STANGELAND. I have a letter here from Mr. Zechman, and it is dated November 27, 1972, that sounds to me like GSA would just as soon not be bothering about the cafeteria and would rather have Mr. Messner comment. In the last paragraph it says that with eating facilities now available and others forthcoming our efforts are concentrated on delivering the remaining space for the EPA. It seems to me that GSA would rather not worry about the cafeteria.

Then Mr. Messner responds to Mr. Zechman's letter, dated December 12, 1972, saying the eating facilities available are still not adequate, and that about 1,600 people are in the building, and so forth. He then stated:

"I will, of course, continue to press for additional food service facilities here. I request your continuing support on this."

I would like to have the letter appear at this point in the record.

[Letter referred to follows:]

DECEMBER 12, 1972.

Mr. R. E. ZECHMAN,
Assistant Commissioner, Office of Operating Programs, Public Buildings Service, General Service Administration, Washington, D.C.

DEAR MR. ZECHMAN: Thank you for your letter of November 27. I sincerely appreciate your efforts directed toward improvement of food service facilities available to our employees at Waterside Mall.

The eating facilities available to us are still not adequate. We now have about 1,600 people in the building with no sizeable, inexpensive, or permanent eating facilities on site. In the spring, our staff will increase to over 3,000. Our food service requirements will increase correspondingly, but we have no concrete information on the openings of additional food facilities. Goncho's Restaurant, tentatively scheduled to open this month, probably will not open due to difficulty in obtaining air handling equipment.

I will, of course, continue to press for additional food service facilities here at our headquarters. I request your continuing support on this.

Sincerely yours,

HOWARD M. MESSNER,
Deputy Assistant Administrator for Administration.

Mr. STANGELAND. Again, Mr. Harvell, was the reason for the 3-year period apparently without a great deal of visible action, a result of a confusion on the part of GSA as to just what they could press the lessor for based on what I call muddy language in that lease?

Mr. HARVELL. Yes, sir, I am sure that that was a major factor. There was much confusion as has been stated here.

There were differing legal opinions as to what we could do and what our remedial action was.

I think we tried to do many things, including threaten and badger, and do a lot of other things but he steadfastly refused to produce.

I think that opened the door to considering alternatives, one of which was obviously if enough commercial facilities come in the area to satisfy the requirement maybe a negotiated change in the contract might have been affected at that time. That was a possibility.

I don't know that it was ever vigorously pursued but it was a possibility.

Mr. STANGELAND. Mr. Ting, is this what you meant this morning by talking about confusing language, this part of the lease that I have been quoting and referring to?

Mr. TING. Yes, sir.

Mr. TRIETSCH. Mr. Stangeland, if I might add to that. You will note in our inspector general report at the bottom of page 9—I think this assists in perhaps clarifying a point that Congressman Levitas made just a short time ago—at the bottom of page 9 we quote an excerpt from the November 27, 1972 letter that Mr. Zechman, on behalf of GSA, sent to EPA setting the tone at that time.

But beyond that you will note that on the following page of the inspector general report we indicate that GSA in fact accepted all the Waterside Mall office space under the original lease on February 12, 1974, and took no exception at that time to the lessor's apparent failure to install a cafeteria.

So it is pretty clear from the available record that after August or perhaps September 1972, little, if any, concern was shown on the part of GSA officials, at least as demonstrated in the record, that would have motivated the lessor to comply with the cafeteria provision.

Mr. STANGELAND. Is there any indication in the record that the Board of Appeals based part of their decision on GSA's abdication of their rights to a cafeteria through a de facto waiver based on that acceptance of the full occupancy of the building in 1974?

Mr. TRIETSCH. My reading of the opinion—perhaps Mr. Ting can expand on this—is that among the actions and inactions that the Board alluded to was, of course, the inaction on the part of GSA to pursue the cafeteria matter until again sometime in late 1975, following the Federal Times news article.

Mr. STANGELAND. Thank you.

Thank you, Mr. Chairman.

Mr. LEVITAS. Thank you: The letter will be printed in the record at the appropriate place.

It was testified to earlier that Mr. Bresler, in his meeting with GSA officials in February 1972, contended that he had received some letters that waived the requirement for providing a cafeteria. But no one was able to find any such letters and Mr. Bresler did not produce them.

During his testimony before the Board of Contract Appeals, Mr. Bresler is reported to have, according to the transcript I have in front of me, talked about written waivers, saying this, and I quote:

> To this day they've never given me a piece of paper which says, Mr. Bresler of Town Center, we hereby waive all this, orally, if that's what the terms would be, and whatever we would have to do here.

Now, apparently Mr. Bresler admits there was no such written waiver but he does suggest, Mr. Galuardi, that there was an oral waiver. That brings us up to 1975 when Mr. Rothman of the Federal Times publishes a story about the missing cafeteria. The matter now becomes active again.

I have before me a letter purported to be written and signed by you to Mr. David Rothman, dated August 19, 1975, which contains the following statement:

> The cafeteria requirement was deleted orally as the lessor met our requirements for providing food facilities in the Waterside Shopping Mall.

Now my question is, how did you come to make that statement?

Mr. GALUARDI. I can't remember exactly how Rothman phrased his question to GSA and to the best of my recollection that letter—which was prepared within the public building service of region 3, which at that time then had this space management and design and construction organization within it—that it was a freedom of information request.

It was overdue already, and I had to hurry up and sign that because Rothman was asking for the information.

Now, to the best of my memory, I remember signing it and then it being dispatched. I later then got ahold of it the next day or so the Regional Commissioner of PBS and the space management people, because something brought it to my attention that it may not have been correct, and I had meetings with them in which I pinpointed the fact that the letter was prepared by Doris Frankenfeld. When I called Doris into the office and said: "Now, what evidence do you have to support this position which was in this paper which I have signed," she then told me she had none.

Mr. Rothman, still following up on his story, called me back and in that phone conversation with Rothman I told him that that aspect of that letter was incorrect.

Now I did not—as I can see from the file—did not in writing write back to Mr. Rothman so saying that, but about 1 year later, as I remember, Richard Vawter, press relations man in central office, confirmed it in writing to Rothman at that time that I had told him and that we have denied that there was any oral waiver.

This triggered, within GSA, the actions which began to take place from there on in.

I called in the space management people and the contracting officer and the issue arose as to whether or not the Government was due a cafeteria, and we had many discussions to see whether or not we did. We looked back into the record the best we could at that time and we could find nothing, so I think Earl Eschbacher was the contracting officer at that time in that region and Earl Eschbacher initiated contact back with the Town Center Corp. and we began the discussion saying you still owe us a cafeteria at that point.

Mr. LEVITAS. What was their reaction to that? I suppose they thought that the matter had all been forgotten?

Mr. ESCHBACHER. When I first contacted Mr. Bresler back in 1975, I guess it was, I told him that I had reviewed the lease in detail and that I still felt that he owed us a cafeteria, and his reaction at that time was it had been waived. I have a different page 27 of the solicitation; the same thing that had gone on in 1972. And that my food facilities that now exist, they are in—we got into this dialog as to what is a cafeteria and the Webster's definition, and that they suffice to be a cafeteria and they met the requirements.

We argued that point for some time. I said it did not meet the requirement, that you owe us a cafeteria in accordance with the original lease, and we had a long discussion and discussions about it. Finally I issued a contracting officer's decision.

Mr. LEVITAS. Yours was the decision that was ultimately appealed to the Board of Contract Appeals.

Mr. ESCHBACHER. That is correct.

Mr. LEVITAS. And your decision was the same as Mr. Barton's decision?

Mr. ESCHBACHER. That is correct.

Mr. LEVITAS. From a number of years earlier.

Mr. ESCHBACHER. That is correct.

Mr. STANGELAND. Now, Mr. Galuardi, at any point in time did you ever consider meeting with the lessor and negotiating a change in the lease and doing it in writing, relieving him of the need to provide a cafeteria and then seek an adjustment in the lease arrangement?

Was that ever considered?

Mr. GALUARDI. No, sir, because we had a lot of strategy discussions as to how we should approach this. At the time I was in the region as the regional administrator, I did not have a concessions division under me. That was in the central office.

Before the contracting officer could rule we had to make a determination as to whether there was still a continuing need for a cafeteria.

And in writing, I believe, we asked central office and in writing they responded back saying yes, there was a continuing need for a cafeteria.

With that in hand we felt from a strategy standpoint we could not go and do what you suggested which is to buy out of the contract.

We pressed the need for the cafeteria forward at that time.

Mr. **Stangeland**. Thank you.

Mr. **Galuardi**. As another strategy, we also determined whether or not we should take the strategy of putting the cafeteria in at the Government's expense and then seeing how the case would come out in the Board of Contract Appeals but we had several problems with that. One was that there wasn't any space available at Waterside Mall. EPA was so space-hungry that they would not give up any space there. They were asking for space elsewhere and we had no place within the Waterside Mall that we would have had the opportunity to put a cafeteria in.

The other problem we would have had is that I am not too sure we would have been able to obtain the funds to put the cafeteria in.

The third thing would have been that we would have been perhaps severely criticized if we then lost the case and the Government had expended the funds to put the cafeteria in.

Mr. **Levitas**. Go ahead.

Mr. **Stangeland**. There were GSA investigations and then General Accounting Office, at the request of Congressman Rose, went ahead and did an extensive investigation of the case.

Was the result that you decided to go ahead and pursue the lessor to provide that cafeteria and then he brought the case to the Board of Appeals? Was it ever considered earlier bringing enough pressure on him to get that case back to the Board of Appeals?

Mr. **Galuardi**. That is not the order in which things occurred. I know that Congressman Rose wrote a letter and there was an Inspector General investigation of it and a report produced. But the public buildings service was independently pursuing its course of action. Having had the thing brought to our attention by Rothman's article in the Federal Times, we made the determination that there was a requirement for it and we were proceeding regardless of Congressman Rose or any investigation being conducted.

Mr. **Stangeland**. So the pressure from GSA was building prior to the GSA inspections investigation and the GAO investigation?

Mr. **Galuardi**. I am not sure about the timing but you're seeing this investigation report when I was the regional administrator, so it had no input on what we were doing.

Mr. **Stangeland**. But it was after those reviews and the report in the Federal Times that you reassessed for a cafeteria, decided a need was there, and then put enough pressure on the lessor to require him to go to the Board of Appeals?

Mr. **Galuardi**. It is not pressure. It is an exercise of a contract requirement which is that the contracting officer has to determine whether or not under the contract the lessor has provided all the things he is supposed to provide under the terms and conditions.

The contracting officer rendered a unilateral decision to the lessor, stating that he was not satisfied that requirement of the contract was being met and then the lessor is entitled to bring that before the Board of Contract Appeals as a dispute of contract.

Mr. **Stangeland**. Didn't the contracting officer in effect do that February 28, 1972?

Mr. **Galuardi**. Well, I—no, it was a letter of intent, I am told.

Mr. STANGELAND. The letter of intent to withhold rentals, in effect, was the action of the contracting officer that was not that much different than finding an absolute need for a cafeteria and the fact the lessor had not complied with the requirements of the lease.

Mr. MULLIGAN. Maybe I can clarify this for you. The 1972 letter was not a final decision of the contracting officer as that term is used in the contract. The final decision of the contracting officer must advise the lessor of his rights to appeal before the Board of Contract Appeals.

The legal effect of that so-called letter of intent really was nothing until such time as the Government actually withheld. At that point he would be entitled to a final decision.

With respect to the final decision that was issued later, the rule is that the contracting officer's decision is final unless it is appealed, within the prescribed period of time. If it had not been appealed then the contract clearly would have required the cafeteria because the contracting officer's decision would have the same dignity as the clause in the contract.

Mr. STANGELAND. In all of the lessor's assurances to GSA that there was going to be adequate eating facilities, was he in the process of developing and constructing the other restaurants in the area for sale, or lease, or whatever? How could he assure GSA that there were going to be adequate facilities?

Mr. ADAMEC. Yes, sir, he was in process of developing restaurants, negotiating his own leases with these vendors, restaurant vendors, and in fact, was providing us at these weekly scheduled meetings, updates of the progress of the negotiations, and when these restaurants would be opened, ready for occupancy and some of the statistical data that we requested of him during the intermittent meetings between the Assistant Commissioners. We had asked for seating capacities, types of menu, and types of turnaround that we had provided to Mr. Marcus to determine whether they were in fact adequate.

Mr. STANGELAND. So then it was to the economic disadvantage of the lessor to bear the cost of providing cafeteria space, and also then provide competition to enterprises that he was engaged in on the outside. It was definitely to his disadvantage to even put in a cafeteria.

Mr. ADAMEC. Are you asking me that, sir?

Mr. STANGELAND. Well, yes, I guess I am asking you that.

Mr. GALUARDI. As a matter of fact, we understand that he gave the restaurants in his agreements with them, exclusive rights. So it began to run against his interests to put the cafeteria in.

Mr. STANGELAND. Was GSA aware of these things?

Mr. GALUARDI. In 1975 and 1976, we became aware of them but I don't know about 1972.

Mr. STANGELAND. Not back in 1971 and 1972, OK. Thank you.

Mr. LEVITAS. I assume these leases with these operators in the mall were percentage leases based upon their sales as well.

Mr. GALUARDI. I would have to assume that.

Mr. LEVITAS. The committee will stand in recess for about 15 minutes. I think we are drawing to the end on this part of it. We will reconvene then in 15 minutes.

[Brief recess.]

Mr. Levitas. The subcommittee will please come to order.

Mr. Stangeland, you were engaged in some questions at the time we broke or you may have just completed.

Mr. Stangeland. I have completed them.

Mr. Levitas. All right.

Do you know how Mr. Rothman got onto this story? Everybody else had forgotten about it. What brought it to his attention?

Mr. Galuardi. I really never found out.

Mr. Levitas. Anybody know?

[No response.]

Mr. Levitas. Mr. Mitchell, Mr. Trietsch, do you know?

Mr. Trietsch. I am sorry, sir, would you repeat the question?

Mr. Levitas. Does anybody know how Mr. Rothman got into this story for the Federal Times? Everybody else seems to have forgotten about the cafeteria.

Mr. Trietsch. I believe in the files that I reviewed—this is only based on my recollection—there was indication that some union officials at EPA in 1975, either on behalf of EPA employees or perhaps on their own initiative, began to raise again an interest in the cafeteria.

Now, perhaps employees at EPA during this 3½-year period continually expressed concerns about not having a cafeteria. If they did, however, there was no documentation that I was able to find on that.

But my recollection is that Rothman's article may have been precipitated by some of the union officials or employees at EPA who were again raising the cafeteria issue.

Mr. Levitas. I got the impression yesterday from Mr. Dodson's testimony that he began to get involved in action after he read the Federal Times story rather than vice versa. I was just curious.

Mr. Trietsch. That was the impression I got, too, yesterday. That didn't seem to conform completely with my recollection of some of the documents.

Mr. Levitas. I understand there is a point you want to correct in your prior testimony, Mr. Mulligan.

Mr. Mulligan. Yes; I testified earlier in response to a question of yours that my first involvement in this matter was in late 1975. Since then I looked at the report of the investigation by the GSA Inspector General, and according to this report I told the investigator I had a meeting with Mr. Roush in the fall of 1972 on the subject.

My best recollection of that meeting was that it was a rather short one, that he was talking about the cafeteria and I didn't know a darn thing about what he was talking about.

When I left that meeting I had no sense of how important it was or what it was all about. I think he was talking to me with—with a belief on his part that I knew something about it and I didn't.

I just wanted to correct that.

Mr. Levitas. OK. Mr. Galuardi, what is the per square foot rental that GSA pays for the EPA space down there?

Mr. Galuardi. I don't think anybody here knows that, although it is in one of the documents here. It is $5 and something a square foot. I will have to get that for the record, sir.

Mr. **Levitas**. I would like you to supply that for the record.

[The information is being retained in the subcommittee file.]

Mr. **Levitas**. Since 1975, has GSA entered into any leases or other financial transactions with Town Center Management or any other corporation affiliated with Mr. Bresler?

Mr. **Galuardi**. We have entered into others at that location but nowhere else in town.

Mr. **Levitas**. Do you know what the rental was for the additional space? How much additional space?

Mr. **Galuardi**. We will furnish all that for the record.

[This information is contained in a letter dated January 28, 1983, from Joseph Sockon to Chairman Elliott H. Levitas, and appears in transcript during December 14, 1982 hearing.]

Mr. **Levitas**. Did anyone say, hey, we ought not to be doing business with Mr. Bresler?

Mr. **Galuardi**. Not that I am aware of, especially with the pressure from EPA to get every square foot of space in the area.

Mr. **Levitas**. Do you know what the additional space was used for?

Mr. **Galuardi**. You mean for the entire block?

Mr. **Levitas**. You said there was additional space leased from Mr. Bresler down there, do you know what it was for?

Mr. **Galuardi**. For office space.

Mr. **Levitas**. For what agency?

Mr. **Galuardi**. For EPA.

Mr. **Levitas**. What agency?

Mr. **Galuardi**. It is all EPA there.

Mr. **Levitas**. I heard there was space leased for another agency of Government down there.

Mr. **Eschbacher**. The Census Bureau leased space there during the census period under their own authority I think, a 1-year lease.

In the last several years I believe we have picked up maybe 20,000 additional feet and we are negotiating with him now for a larger block of space for EPA.

Mr. **Levitas**. With Mr. Bresler?

Mr. **Eschbacher**. That is correct.

Mr. **Mulligan**. Mr. Ting just advised me that he has another Board of Contract Appeals case involving Town Center, a dispute over the amount of space we are leasing down there in that area. So that is the second appeal before the Board.

Mr. **Levitas**. You know, I am not sure it is beyond the scope of this hearing but why in the world would you want to continue to do business with the man?

You know there is a rather—I am not a judge—there is a very strong implication in this record that Mr. Bresler, one, switched pages in a contract, maybe Xeroxed over letters so that they would appear to be different than they were originally, and claimed a written waiver at one point and then subsequently said he didn't have a letter. I could keep going on and make some other suggestions. Why would you continue to do business with somebody like that?

Mr. **Galuardi**. I would have to say there has been no formal debarment of him. Therefore, the Government would not be precluded from entering into contracts with him. And could not——

Mr. **Levitas**. That is not the question I am asking.

Mr. **Galuardi**. I am not too sure the evidence you have pointed out is sufficient for debarment. It is not my judgment to make.

Mr. **Levitas**. I am not making that judgment either. I am saying there is pretty strong evidence that when somebody ends up with a contract that is different, physically different, from the contract copy which the Government has and an administrative judge or the Board of Contract Appeals finds that, in light of sworn testimony by Mr. Bresler, his contract consisted of other pages, it seems to me a pretty strong case for somebody to consider debarment.

Mr. **Galuardi**. Mr. Chairman, Mr. Carmen, and I had a discussion this morning, and said that I should tell the subcommittee that he intends to reopen the investigation and he would take every step that is within his power to recover any costs which the Government may be due.

Mr. **Levitas**. I am very pleased to hear that.

Mr. **Stangeland**. He certainly seems to have had a conflict of interest between his performance for the Government and his interest in businesses that would have been competitive with what you people were requiring him to do.

You know, it just seems to me that it is very questionable and I would hope the very, very best attorneys from GSA write any contract that you enter into make sure that every party understands specifically and clearly what it says.

Mr. **Levitas**. Which brings me to my next point. I pointed out in some questions and discussion I had with Mr. Harvell that regardless of how the Government got the lease to begin with and why the Government did not take or pursue the position which the contracting officer initially recommended, there seems to be one thing that is more or less consistent on the part of GSA which is that there was the right to have a cafeteria provided by the lessor at his expense.

But the Board says that right was lost and, as I indicated, it seems to me it was lost because it got over into the Assistant Commissioner for Operating Programs management, and then got put on the back burner, forgotten, caught up in Watergate and wage and price controls and every other thing. But it was nonetheless forgotten.

Now, what I want to know now is what procedures has GSA put in place to make certain that when there are contractual rights which it possesses they are not forgotten and lost by failure to enforce those rights as occurred in this case?

Mr. **Galuardi**. GSA has done several things. They have established an acquisition policy in the central office to write policy on a procurement.

They have established in each of the services a contract office, in other words, within the Public Buildings Service there is a separate Assistant Commissioner for Contracts.

Within each region within the Public Buildings Service there is a like position.

Within that division are the contracting officers for most all contracts except in some regions the leasing contracts are still in space management.

But Acquisition Policy has established a system in GSA of warranting contracting officers. In order to be a contracting officer you must display evidence that you have performed certain things, you have had to take certain courses, you have had a certain education and so forth, and you must get a formal paper called a warrant officer document. That warrant officer document may be for large or very small contracts.

It tells you specifically what you are warranted to procure. Training has gone along with the establishment of these warrant officers. We have had to establish training programs. The people have gone to them in order to become warranted through that training system.

We have established in those contract offices within the Public Buildings Service a contract assurance section. This is a separate group of people within that contracts office whose purpose is to go and investigate contracts to see that they are being properly performed and administered.

We have established a system whereby contract administrators—these are the people who would be responsible for seeing that the contract provisions are carried out—it is done by a specific document from the contracting officer to that particular person. If that person moves, he loses that authority. It no longer goes with the position. It has to go with the person. The contracting officer must give those contract administration duties specifically to a person.

The sense of all of this is that managers are not entitled to interfere with contracting officers. They are a breed apart by themselves now and they are held responsible for those contracts.

There are limitations upon contracts in size which can be signed by the contracting officer. If they are above a certain limitation, as in negotiated contracts, they must be submitted through a contract clearance process. They have to go from the regional office to the Public Buildings Service central office and there are certain ones that must then also go to the Office of Acquisition Policy for contract clearance.

The IG has established within its organization since 1978, a system whereby they have audits and investigation, and inspections.

They have a separate inspections program and that inspections program is doing somewhat the same things that our contract assurance people are doing but it is an independent look at it by the IG.

So they are going out and looking at lease contracts and construction contracts and Building Service contracts and reporting through the IG.

Mr. LEVITAS. Is there a computerized system or otherwise which would periodically call to somebody's attention, the manager or contracting officer or auditor, whoever, that under contract XYZ there is an unresolved, outstanding issue that needs to be disposed of and resolved?

Mr. GALUARDI. I am not aware that we have a computer program to do that because it would have to be inputted by whoever the person is responsible for checking it. So it would rest upon the validity of that person anyhow. So the responsibility rests with that person who is designated.

Mr. **Levitas**. Mr. Trietsch, has the Inspector General's Office made any evaluation of the procedures which GSA now has to determine whether they are considered to be adequate to avoid a recurrence of the abandonment or waiver of the contractual right problem?

Mr. **Trietsch**. Mr. Chairman, I am not aware of any specific evaluation or management study that we may have done. I do know that periodically we do audit specific GSA contracts—including leases—as well as specific GSA programs.

I can find out the answer to that question for you.

Mr. **Levitas** I wish you would and, in fact, if you would like, I will be happy to write a letter to the Inspector General, specifically to ask to determine the procedures that GSA has now in place to avoid the abandonment of rights under leases and contracts of the sort that occurred in this case, and to determine whether those procedures are, in the Inspector General's opinion, adequate to accomplish that purpose.

Mr. **Trietsch**. We would be happy to respond to that.

Mr. **Levitas**. The only thing worse than what has happened in this regard is for it to happen again.

Mr. **Trietsch**. Absolutely.

Mr. **Levitas**. Do you have anything else?

Mr. **Stangeland**. Yes.

Are there many leases negotiated now which require the lessor to provide the cafeteria?

Mr. **Galuardi**. I would have to rely on some of the leases in the bigger area, but it is my understanding that there are not too many of them. I think we are working on one right now that we are aware of, but that is it.

Mr. **Stangeland**. GSA does not have specific legislative authority or mandate to provide cafeterias; is that right?

Mr. **Galuardi**. That is correct. We have no authority in legislation to provide eating facilities in any location except for the Randolph Sheppard Act which provides that we should put the blind stands in, vending stands.

Mr. **Stangeland**. What section of the law, then, allows you to get into the business of providing cafeterias?

Mr. **Mulligan**. GSA and its predecessor agencies have been providing cafeterias for maybe 50 years. The General Accounting Office has never questioned our authority to do it and I think the last time we wrote to GAO, we expressed the view that our authority to provide cafeterias was inherent in our authority to operate and manage public buildings under section 210 of the Property Act.

That has been the view ever since I have been at GSA and the GAO understands that that is our view and they have never questioned it.

Mr. **Stangeland**. Have you had any other problems with cafeterias where you had the lessor provide them?

Mr. **Galuardi**. Yes, we have. We have had another case in the Nassif Building and it is before the Court of Claims on the same sort of issue. They did provide the cafeteria facility there but then they complained that the requirement that the Government laid upon the lessor was excessive and the Court of Claims ruled in behalf of the lessor. The case has not yet been adjudicated.

Mr. MULLIGAN. The case has been decided and the facts are somewhat different than this case in that the Court of Claims held that the 800-seat cafeteria specified was not an economically viable cafeteria from the standpoint of the lessor, and was, I believe, in fact, too big for the requirements of the Government. They held that a cafeteria was required and remanded the matter to the contracting officer to determine a more fair size of a cafeteria.

And I will be glad to send a copy of the decision to the subcommittee for its records if you decide you want to include it.

Mr. STANGELAND. How many square feet are there under this lease for EPA at Waterside Mall?

Mr. ESCHBACHER. Approximately 600,000.

Mr. STANGELAND. That is about 100,000 more than the initial lease? The initial lease was 500,000?

Mr. ESCHBACHER. I think the initial lease was 500,000, yes.

Mr. STANGELAND. At the time that was leased, was that at a lesser rate than the average going rate for new buildings in Washington, D.C., do you recall? What kind of terms were there on that lease for 20 years? How does it escalate? There must be an escalation in it.

Mr. ESCHBACHER. There is an escalation in it and there has been one escalation. I believe the escalations were at 5-year intervals. The lease was very favorable back in the year that it was awarded. I had nothing to do with it but I believe that the next lowest bid to that was around $7 and some cents.

Mr. STANGELAND. Is there a percentage escalator in 5 years or is that a total reopening of negotiations in 5 years?

Mr. ESCHBACHER. That is based on actual cost of services.

Mr. GALUARDI. Every escalator is different. We would have to get the specifics on this. But as a general philosophy, if I remember it, it was that when we first were doing long-term leases we provided no escalators in them at all.

That was when the economy was fairly stable. When the economy changed, we began to put the escalators in every 5 years and then in 1978 we began to put escalators in every year.

The method of escalation was originally on the basis of the actual cost to the lessor—have we switched?

Mr. ESCHBACHER. We have switched now, the annual escalator is based on the percentage of the CPI for his services.

Mr. STANGELAND. I would be interested in having a copy of the lease and an explanation of the escalation arrangements.

I have no further questions of this panel, Mr. Chairman.

Mr. LEVITAS. There was one other question that came to mind. The escalation clause in this lease is based on recovery of additional costs of services, and taxes I would assume. Is that correct?

Mr. ESCHBACHER. That is correct.

Mr. GALUARDI. Yes, that is correct.

Mr. LEVITAS. Mr. Eschbacher, you referred to the next lowest bid in response to this solicitation. That opens another whole category of questions which I am not sure you want to get into because you may not have knowledge.

Mr. ESCHBACHER. I was going to say, I am not familiar with all the other responses in that.

Mr. **Levitas**. I think Mr. Shipp would probably be most familiar with that and we will probably get into it with him but it is my understanding that there was only one other responsive bid and there is some question as to how real that bid was.

Mr. **Eschbacher**. Yes, sir.

Mr. **Levitas**. I think we better not get into that at this point because I am not sure anybody here knows enough about it to really testify on the subject.

Does counsel have any questions? If not, that I think will be the conclusion of my questions, and Mr. Stangeland's questions on this point as far as this panel is concerned.

I appreciate your contribution. Hopefully, the end result of these hearings may be that we can put an end to some of these inquiries about this matter. But quite clearly, regardless of anything else, this is a situation in which the Government bought and paid for something and didn't get it. Regardless of what Mr. Bresler's contentions are, it is what they bought and paid for, and the Board of Contract Appeals made a finding on that point. But the fact that the Government didn't get it is pretty obvious also.

Hopefully, these hearings will clarify all of the circumstances surrounding that and help to assure that it won't occur again in the future.

Thank you very much.

Mr. Trietsch, if you and Mr. Mitchell would just stay seated for this last witness.

Mr. **Trietsch**. Yes, sir.

Mr. **Levitas**. Before the next witness I would like to note that by unanimous consent, without objection, the following items will be made a part of the record, to be kept in the subcommittee files.

The GSA Report of Investigations of Alleged Irregularities, R-3 lease, Cafeteria, June 1976. Case 27, GSA, October 31, 1978.

GSA Inspector General's Report, July 16, 1980. GSA Report of Investigations, November 6, 1980.

Mr. **Levitas**. The final witness for today is Mr. Larry F. Roush, former Commissioner, Public Building Services. Would you raise your right hand.

Do you solemnly swear that the testimony you will give before the subcommittee today will be the truth, the whole truth, and nothing but the truth?

Mr. **Roush**. I do.

Mr. **Levitas**. Thank you, Mr. Roush. You may be seated.

Would you start by simply informing us for the record when you assumed the position of Assistant Commissioner of Operating Program at GSA?

TESTIMONY OF LARRY F. ROUSH, FORMER COMMISSIONER, PUBLIC BUILDING SERVICES, GSA

Mr. **Roush**. About when?

Mr. **Levitas**. Yes.

Mr. **Roush**. My recollection is that it was the beginning of 1971. It may have been late 1970.

Mr. **Levitas**. What were you doing prior to that time?

Mr. Roush. I was a Special Assistant to the Commissioner of Public Buildings, dealing mostly in congressional relations, preparing whatever was necessary and handling mail and correspondence.

Mr. Levitas. When did you first learn of the Waterside Mall project or, to put it another way, the proposed acquisition of——

Mr. Roush. You have to bear with me while I try and recall 10 years ago. I believe it would have been—I believe it would have come into my knowledge simply from the office I was sitting in at the time, where I was trying to observe the impact of whatever congressional action there might be on the agency, on behalf of the Commissioner, and at that point in time when EPA was coming into being, there was a great deal of pressure. The legislation had passed, the White House was in back of it, the congressional committees that were involved wanted action quickly, and I would have been aware at that point in time as a special assistant to the Commissioner that something was brewing, but I would not at all have had any direct responsibility over any solicitation at that point in time.

Mr. Levitas. When did you become aware that there were any dealings between GSA and the Town Center Management, Mr. Bresler's company, with respect to the acquisition of space at Waterside Mall?

Mr. Roush. I would have become aware when the solicitation would have been issued.

Mr. Lfvitas. So that would have been sometime in late 1970?

Mr. Roush. Yes, sir.

Mr. Levitas. Would you have had any involvement in that solicitation?

Mr. Roush. No, sir, not to my recollection.

Mr. Levitas. The evidence is that Mr. Bresler's company responded to the solicitation and was the apparent low bidder sometime in late 1970, early 1971, and thereupon entered into some negotiations and subsequent proposals to GSA with respect to this particular matter. The testimony is that a Mr. Shipp, a Loy Shipp, was primarily handling the negotiations for GSA at that time.

During that period of time, what would your relationship have been to Mr. Shipp and his negotiation activities with Town Center Management?

Mr. Roush. OK. It—I think Mr. Galuardi pointed out previously that it was not unusual for Mr. Shipp to enter in as head of national space management, to enter into major procurements.

Lloyd was a noted negotiator, with a long history of knowing the Washington market, having been there, and he was designated as the individual who was going to lead the negotiating team on this project and he needed the regional staff on that effort.

That staff—I have to reiterate some of the testimony I heard today, because I can't remember who "was on first base" during a particular day.

Mr. Bagley's name was mentioned today, and those people supported Mr. Shipp, I believe, in those negotiations.

Mr. Levitas. Who would have designated Mr. Shipp to be the negotiator?

Mr. Roush. That would have been done by the Commissioner, Mr. Sampson.

Mr. Levitas. Mr. Sampson?

Mr. Roush. Yes, sir.

Mr. Levitas. At the time Mr. Shipp was designated as the negotiator, were you then serving as Assistant Commissioner?

Mr. Roush. It is very difficult to say. I don't know when Mr. Shipp was designated to negotiate that one. I was coming into that job right around the end of 1970 and the beginning of 1971, certainly not prepared to take on a major negotiation; and second, my space division in these responsibilities would have been ruled by the regulations set forth by Mr. Shipp's office anyway, so while we were organizing as the P.M. shows up over there, operating programs, this would not have been an unusual procedure at all.

Mr. Levitas. The testimony also reveals that at some point during the course of the negotiations, Mr. Shipp was apparently removed from his responsibilities as negotiator, the contention being that Mr. Kunzig, who was then the Administrator, believed that Mr. Shipp was negotiating too hard, was too tough a negotiator.

There was one specific that I recall that was mentioned about a Mr. Richey, Mr. Bresler's attorney, having called somebody, and in response to that call, Mr. Kunzig had said to Mr. Shipp that he was not to insist on a certain provision in the contract. I think one that would pay for utilities or other items, and that it should be deleted.

Ultimately, the bottom line was that Mr. Shipp was removed from that responsibility. Do you have any knowledge or information about those circumstances?

Mr. Roush. I have no personal recollection or information. In fact, I was quite surprised to hear the testimony today. My impression was at the time, to the best that I can recall, was that Lloyd had completed the negotiations and had turned the lease, then, over to the Office of Operating Programs for Management from then on out, attempting to get the construction done and see if we could get to occupancy on a very pressing, large procurement.

So the answer to your question, and I am sorry if I rambled a bit, is that I don't have any personal knowledge of that at all.

Mr. Levitas. The first time you ever heard that was when I made reference to it earlier?

Mr. Roush. I was told about the report as I was coming up today, and I was quite surprised.

Mr. Levitas. After the contract or lease was signed in February 1971, when did you have your next contact and involvement with the project?

Mr. Roush. I am sorry. You say once the solicitation was accepted in February, when did I have any involvement personally?

Mr. Levitas. Yes.

Mr. Roush. I don't know that I can answer that. I don't know that I can tell you.

Mr. Levitas. OK. Let's go back. Let me start——

Mr. Roush. If you have got something I could look at, perhaps, to refresh my memory.

Mr. Levitas. There has been testimony that on February 28, 1972, Mr. Barton, the contracting officer, sent a letter to Mr. Bresler, the lessor, insisting that the cafeteria in question be built, or that rent would be withheld by GSA beginning March 31, 1972. Using that as a point of reference, had you had any dealings with this particular lease or project from the time it was signed prior to Mr. Barton's letter?

Mr. ROUSH. I am sorry. I have no recollection of having dealings with it. On the other hand, I expect I did. Simply sitting in the office where I was, I can't imagine how I would not have been associated with it, but I have no recollections of any meetings or any specific actions that would have gone on.

Mr. LEVITAS. You were obviously aware that the project was going on and construction was occurring?

Mr. ROUSH. I certainly was. It was a large project and I had to be aware of it.

Mr. LEVITAS. Were you aware of any problems or difficulty which the contracting officer or the project manager was reporting about the progress of this project?

Mr. ROUSH. Not at that point in time, I would doubt very much. Let me point out that the reason the project manager, Mr. Adamec, was appointed on a project like this is that it was a large, and expected to be, complicated procurement.

We were going to have to go through a period of construction; it was under a system—I am having trouble recalling what it was termed. I believe the procurement occurred under the 5-point system, the old 5-point system, which has gone into disuse, where the bidders had to deliver certain papers which said—I am not going to be able to reiterate the 5-point, but basically that they owned the property, they had the ability to go ahead with construction, and, "Therefore, I am offering it to you," and those were always difficult, particularly when you were under deadlines, and as I pointed out earlier, the Congress said: "We are establishing this agency," and the White House said: "Yes, and we are giving them precedence," and a project manager to try to keep all the loose ends together was appointed.

Mr. LEVITAS. OK. The first time that I have a record of your personal involvement following the execution of the lease is embodied in a letter from you to Mr. Bresler. No, that is not correct. It was in a memorandum to you from the Assistant Commissioner for Buildings Management, discussing the status of the cafeteria and suggesting that the size could be negotiable, but that private facilities would not preclude the need for the cafeteria. That was March 10, 1972.

And then, your deputy, Mr. Harvell, there was a memorandum from him to the buildings management people which talked about a staff meeting to fully discuss the cafeteria problem, and it advised of the decision to withhold rent until cafeteria construction began.

I would like you to focus on those two points in time. The memorandum to you calling to your attention the status of the cafeteria and making some reference to negotiable aspects of it, and then a meeting which, at least, your deputy attended—I don't know if you did or not—in which the cafeteria matter was fully discussed.

Now, it is clear from these documents that it is not only directed to your knowledge, but directly in your office. It is a big project and you know about it. How about explaining what was going on at that time.

Mr. ROUSH. I believe what was transpiring at the time was a dispute. From the phrase you gave me, I don't recall the memo specifically, but I believe it is fairly clear that there was a dispute as to exactly what the Government was supposed to get.

I think as was well pointed out today, there was a tremendous amount of confusion. Exactly what is the Government supposed to have, what is the size of the cafeteria that is supposed to be there, and an internal dispute between buildings management and trying to get a precise measurement of what is the Government's in this case.

Mr. LEVITAS. The matter that was brought to your attention at that time: had you heard about these problems, and the cafeteria issue from anybody else prior to that time?

Mr. ROUSH. I don't know that I can tell you exactly when I became aware of that.

Mr. LEVITAS. I am sorry. I didn't understand you.

Mr. ROUSH. I am sorry. And I am not sure when I became aware of it.

Mr. LEVITAS. Did you have any discussions about the cafeteria problem with Mr. Bresler prior to the matter being called to your attention in internal memoranda of GSA?

Mr. ROUSH. I don't think so, but, again, I don't recall those specific events. It is just simply too long ago. Is there anything that would give us any clues? If there is anything in the file?

Mr. LEVITAS. The memorandum of March 10 that I referred to starts off by saying: "With reference to our memorandum of January 28, 1972." That January 28, memorandum to you from the Assistant Commissioner for Buildings Management begins to raise the question of the availability of food service facilities in the Waterside Mall project, and makes the point that Mr. Adamec had informed the Acting Director of Concessions Division that the lessor would not meet his previous commitments in regard to the provision of adequate food service facilities. There was some discussion about that, and then the next place where a memorandum is written to you is that March 10 memorandum, which specifically talks about the cafeteria.

Now, prior to those two memoranda, do you recall any involvement in the cafeteria question at Waterside Mall?

Mr. ROUSH. No, sir, and I normally wouldn't. With a project manager leasing officer, and the Space Management Division working on something like this, in fact, if it came in as a carbon, or even though it may have been directed to me, it frequently would have been routed to whoever was responsible in my operation.

It may have been routed, you know, entirely by me. I was going through, I believe, in those days, my recollection would be, about a foot of mail a day, and much of it was being sifted off and simply directed to the office that was responsible.

Mr. LEVITAS. The March 10 memorandum that I referred to gets into the discussions that had been going on between GSA officials and Mr. Bresler. It talks about these prior meetings, and about what Mr. Bresler is contending, and the matter has now been raised to your level. Mr. Adamec has described earlier about how he tried to resolve this, and he couldn't pass it to Mr. Barton and now the matter has come up to you as the Assistant Commissioner.

What did you do at that time with respect to the issue?

Mr. ROUSH. Mr. Adamec's testimony reminded me that he brought Mr. Bresler to a meeting in my office, and I believe at that point in time is when it became clear to me that there was a major dispute in terms of what was in the documents. Although I—again, I am basing my recollection partially on the testimony today—I believe that the two main issues were, No. 1, the discrepancy in the documents, or at least a disputed situation; and second, that within our own house we had not decided precisely what was the Government's.

We decided there was something that was the Government's, but it was still unclear, even the quotes you gave me from the memo to me from Mr. Galuardi suggest the size is negotiable. That helps focus the confusion that was going on at the time.

Mr. LEVITAS. Mr. Barton wrote to Town Center Management, the lessor, on February 28, and said, "You owe us a cafeteria. If you don't build it, we are going to start withholding rent." Then on April 19, you wrote Mr. Bresler and said that you were rescinding the decision to withhold rent as Mr. Barton had written him.

Now, my question is, why did you do that, and on whose authority or direction did you make that decision?

Mr. ROUSH. I would have made that decision on my own authority, and I believe I would have made that decision based on what I was just describing to you, the coming to light that there was a dispute that I hadn't been aware of, and that it needed very careful review to know exactly what our legal rights were and what our responsibilities were, and that I did not have that at my disposal at that point in time. I wanted a clear opinion from our lawyers, from our best leasing officers, and that needed to be gathered together. Now——

Mr. LEVITAS. Go ahead.

Mr. ROUSH. I am sorry. That would be the best of my recollection. There may be other factors in there that I just can't recall.

Mr. LEVITAS. Did you discuss this matter with Mr. Kunzig or Mr. Sampson before you made this decision?

Mr. ROUSH. No, sir, not to my recollection. It was, at the best of my recall, it was a matter where we did not have all the facts at our disposal, and it would have been highly improper, I felt, to proceed along a line that could not be supported by the documents or by legal advice.

Mr. LEVITAS. Your GSA colleagues, Mr. Adamec, Mr. Barton, had said that they had checked with counsel before writing the February 28 letter. Mr. Bresler had taken a variety of different positions about why it wasn't required, and yet, you felt that it was more appropriate not to proceed with Mr. Barton's recommendation, to overrule him rather than to accept his position and leave it to Mr. Bresler to respond.

Is that essentially the situation?

Mr. ROUSH. I felt that we didn't have adequate information to proceed, and I wanted a clear legal finding at that point in time. I just don't recall anything else, particularly, about the situation.

Mr. LEVITAS. Had you spoken to Mr. Bresler between the time of Mr. Barton's February 28 letter and the time you wrote your April 19 letter?

Mr. ROUSH. I—if it was the occasion of the meeting in my office, yes. That is possible. But I recall of no other occasion when I would have discussed it.

Mr. LEVITAS. You did not meet or discuss this matter with Mr. Bresler between Mr. Barton's letter saying we are going to hold up your rent and the time you said, "Well, I am not going to hold up your rent."

Mr. ROUSH. I am sorry. Quite the contrary. I think the meeting in my office occurred.

Mr. LEVITAS. Other than the meeting in your office?

Mr. ROUSH. Oh, no. Not to my recollection.

Mr. LEVITAS. Did you consider this to be a significant decision on your part, or was it sort of routine? I mean we are talking about a good contract. We already had the top negotiator working on it.

Mr. ROUSH. It was a small segment of a large contract. It certainly was a thorny issue, and it came, I believe, quite as a surprise that this kind of a flaw was potentially in the contract. Again, I believe that to move without knowing what the facts are would be irresponsible.

Mr. LEVITAS. Having made that decision to overrule the contracting officer's position until you got all the facts and legal position, what steps did you then take to accomplish those things necessary to decide what you should do? Did you call in the General Counsel, or the contracting officers, or what did you do at that point in order to carry out the reasons that you gave for not wanting to go forward?

Mr. ROUSH. I don't recall specifically. Normally, we would have given instructions to Mr. Adamec as the project manager, to please get together the appropriate people and bring the advice back up through the line. I don't recall specifically giving him any instructions or writing any memoranda. Normally with the volume of business, it would have been assigned to someone to say, "Pull it together and get it back up here."

Mr. LEVITAS. According to the documentation that I have seen, there does not appear to be any request for getting the opinion of counsel or determining other facts or taking other action initiated by you after your April 19 letter.

What I am saying is that there was a decision made by you to overrule the contracting officer pending final resolution of what the legal position was, what the facts were, and yet there was not an accompanying memorandum to the General Counsel's office, or to building management, or whoever, to do or carry out what you said you felt had to be done before a final decision could be made. I am at a loss, if that was the basis of your decision, to understand why you didn't go ahead and do something about it.

Mr. ROUSH. I believe something was done. I believe verbal instructions were given, and, again, I believe the occasion for it would have been the meeting with Mr. Adamec. He was the project manager. He was present in my office. I would have normally given those instructions. I wouldn't have drafted a memorandum.

Mr. **Levitas**. Did you ever notify Mr. Sampson or Mr. Kunzig of problems that were involved and the position you had taken on this matter?

Mr. **Roush**. I don't recall giving any—giving them any information on it. I am not sure—I remember the rather detailed notes that Mr. Adamec kept on the course of the project. Copies of those, I suspect, were being distributed all over the agency. I would imagine those would have gone on up the line, but no specific instructions that I recall. Or information, rather.

Mr. **Levitas**. Well, one of the gaps in this whole chronology is that after this decision had been elevated into your lap, with the project manager and the contracting officer demanding that Mr. Bresler build the cafeteria that the contract provided for, as they saw it, and your position that, "Hold off, let's not move too fast until we find out just what the situation is." Then the matter seems to have been dropped by you. You don't go forward.

Mr. **Roush**. A couple of things I would like to point out: That the testimony of Mr. Ting this morning pointed out some of the difficulties that we were facing on that, or beginning to get the first blush of and those were the things that I felt needed to be researched early on.

The second point is that shortly around this time, I exited the Office of Operating Programs and moved into the first wing.

Mr. **Levitas**. There is a curious handwritten memorandum of May 5 from you to Doug, who I take to be Doug Harvell.

Mr. **Roush**. Likely, yes, sir.

Mr. **Levitas**. I don't know if you have seen a copy of this. I will show it to you. But it says, "re: EPA cafeteria. I think we should find some way to put a cafeteria in EPA's space. Let's take that position and run. We may have some costs and problems but 3,000 employees need some Government controlled service," and it is signed by you.

Now, that is curious to me, in light of the fact that we can't find anything in writing where you were pushing General Counsel to do something to make Mr. Bresler do what Mr. Barton thought he ought to be doing. You know there is some need for the cafeteria, but it doesn't say, "I think we ought to get General Counsel to give us that conclusion, or sue or do something." I just don't understand how that relates to the position you take on your April 19 letter.

Mr. **Roush**. I may have been getting information—I may have been getting information back by that point in time. I am not sure. Let me take a look at it and see if it raises any recollections.

Thank you. Oh, well, there is a small underline mark under "We may have some costs and problems." That was sort of a footnote, I would guess, knowing me, saying, "I know darn well we are going to have problems with this. There are going to be legal problems from what has been raised here in the last month or two," but still taking the consistent GSA position that we were owed some food service capability, and all I would have done in this memo was say, "Hey, let's get this organized, let's keep this moving."

That is all that memo brings back to my recollection at the moment.

Mr. **Levitas**. You don't have any recollection of receiving any written response back from general counsel's office or anyone else saying, "We have taken another look at this matter and we still think they owe us a cafeteria?"

Mr. ROUSH. No, sir, I don't recall that at all. It may have happened. I just don't recall. Second, I don't recall exactly when I left Operating Programs, but it had to be right around this point in time. It was midyear. It may have been June or July. That is about the time. So we would have been waiting for those materials to come back, I believe, at this point.

Mr. LEVITAS. Just one or two last points before I call on Mr. Stangeland.

It is your testimony that other than the meeting in your office referred to by Mr. Adamec earlier, you did not speak with Mr. Bresler about the cafeteria problem prior to writing your letter of April 19?

Mr. ROUSH. I have no recollection of any other conversation with him, sir.

Mr. LEVITAS. And you don't recall, prior to your April 19 letter, discussing that decision with Mr. Kunzig or Mr. Sampson?

Mr. ROUSH. No, sir.

Mr. LEVITAS. Mr. Trietsch or Mr. Mitchell, are there any documents that you are aware of that you have been able to ascertain in which Mr. Roush solicited or received information related to the enforcement of that provision in the lease subsequent to the April 15 letter?

Mr. TRIETSCH. Mr. Chairman, I believe that on page 7 of the Inspector General's report of 1980, in the footnote at the bottom there is an indication that in June of 1972 two attorneys with the Office of General Counsel apparently prepared an opinion with respect to legal options that might be available, although it's unclear what that opinion was; but there is a reference to that in the records.

In addition to that, the project coordinator's notes—I believe that would be Mr. Adamec—as seen on page 8 of the Inspector General's report, indicates that in August of 1972 the General Counsel's office was presently exploring alternative methods of seeking relief. There was some suggestion in the record that there was a memorandum. Specifically, it is indicated in the Inspector General report, quoting from the project coordinator's notes on August 17, 1972, where it says that the General Counsel advised the Office of Operating Programs of their recommendations relative to legal alternatives for obtaining adequate food facilities.

These notes state that this report in detail is forwarded by separate ~~memorandum. No one in re~~cent years has ever been able to find that report. Neither myself, Mr. Mitchell, nor Mr. Ting who referenced it either in his brief or perhaps in some of the documentation that was prepared surrounding the hearings before the Board of Contract Appeals, that he was unable to find this detailed report or memorandum from the General Counsel which apparently was written in August 1972.

I think you could speculate that given the detail with which Mr. Adamec took notes, there must have been a report from the General Counsel's Office, although it's unclear what that report indicated.

Mr. LEVITAS. Mr. Roush, do you have any other comments on that part of it?

Mr. ROUSH. No, sir, I have no recollection of seeing that report. In August 1972 I would no longer, definitely no longer have been in that office.

Mr. LEVITAS. Do you know whether Mr. Bresler was a personal friend, close associate, or had some special relationship with Mr. Kunzig?

Mr. ROUSH. No, sir, I would have no knowledge of that.

Mr. LEVITAS. I think you testified earlier you didn't know until you heard it earlier today about Mr. Kunzig's alleged contact with Mr. Shipp about the negotiations. But you had no information about Mr. Bresler's personal friendship or any other relationship with Mr. Kunzig?

Mr. ROUSH. No, sir. It was commonly rumored, I believe, around the time, that Mr. Bresler had a lot of friends, but I don't think I ever heard a specific indication of who those friends were and to the best of my recollection I never had verbal traffic or written traffic regarding that matter.

Mr. LEVITAS. I have a few more questions, but let me turn to Mr. Stangeland.

Mr. STANGELAND. Thank you, Mr. Chairman.

Mr. Roush, when did Mr. Kunzig become the Administrator of the GSA?

Mr. ROUSH. Well, it preceded my time there but I believe the early part of 1969, if you will bear with my fairly intelligent guess.

Mr. STANGELAND. Shortly after the new administration had taken over the White House?

Mr. ROUSH. Yes, sir.

Mr. STANGELAND. Mr. Kunzig is from—was from Pennsylvania by way of Minnesota?

Mr. ROUSH. I am not sure what the travel was, but, yes, sir.

Mr. STANGELAND. And Mr. Sampson, when did he become head of the public buildings section?

Mr. ROUSH. Again, that preceeds—oh, the public buildings section.

Mr. STANGELAND. He is on that chart as head of the public buildings section.

Let me ask you another question as well. Was Mr. Sampson a career GSA person?

Mr. ROUSH. No, sir, he was not. I believe he entered the Public Buildings Service commissionership in 1970, at the early part of 1970.

Mr. STANGELAND. Had he been with GSA prior to that?

Mr. ROUSE. Yes, sir, he was Commissioner of the Federal Supply Service for 6 to 9 months, I believe.

Mr. STANGELAND. So he came in shortly after Mr. Kunzig?

Mr. ROUSH. Yes, sir.

Mr. STANGELAND. And then you came in you said in late 1970? When did you first come with GSA?

Mr. ROUSH. I first came with GSA working with the Federal Supply Service and that was in July 1969. I believe July 1969, yes, sir.

Mr. STANGELAND. OK. Now then, the reorganization that took place in 1971 which established the Office of Operating Programs, can you just describe how that came about and the scenario that established that new post within GSA?

Mr. ROUSH. If you will bear with some speculation, if that is permissible, I don't know if it was from Mr. Barton or Mr. Galuardi who made the point fairly well earlier that it seems to be a swing of the pendulum as to the high degree of difficulty that is experienced when a field operation way, way, way down on the organization chart is trying to deal with new agency heads at the central office level in Washington. It would be, I believe, Mr. Galuardi who I believe pointed out they had split the Washington area operations out from the normal district operations now centered in Philadelphia. Again, the same kind of circumstances where a district office in Philadelphia, there's no way they could serve the cabinet officers and the power that resides here in the home Washington scene. I believe that is the reasoning for establishing operating programs in the central office function.

Mr. STANGELAND. Would that approach have generated from the new administrator or would that approach have generated from the career GSA staff people who saw a better way to function?

Mr. ROUSH. Well, the——

Mr. STANGELAND. Who established the policy? I guess that's the question.

Mr. ROUSH. I believe that Kunzig established it on this occasion but there was a bit of verbal jousting going on in the hall before we came in and I think it was during the break after Mr. Galuardi's testimony and it was brought to the conversation that, for example, Mr. Gaskins, who was mentioned in earlier testimony, head of space management for the Washington area, it was, the question was brought to our attention that he was even attending the administrator's staff meetings. This was in the prior administration, so I believe what Mr. Kunzig may have done here in some instances is formalized what had perhaps been a more informal relationship before, which Mr. Galuardi pointed out, they all took back to the region 3 area again when he went back as regional administrator and which is now sort of back in a central office kind of context being fragmented off and being Washington district office only. So the pendulum swings back and forth frequently.

Mr. STANGELAND. Now I would like to pursue the line of questioning as to the withholding of rental payments. First of all, we have the letter of February 28 from Mr. Barton to the lessor to which he responded within about 4 days and where he states that the need for the cafeteria had been informally waived because private facilities would be available.

Then I have a memo here from the Assistant Commissioner of Buildings Management to yourself discussing the cafeteria status but within that memo there is no discussion about waiving rentals.

Then is a memo from Mr. Harvell, that on March 20, in consultation with Mr. Adamec, Mr. Barton, and a Mr. Cole, the bottom line is that all rental payments will be held and not released until cafeteria construction is begun.

Next we have the meeting of March 30, where the lessor produces his copy of the solicitation No. 55 different from the GSA version. Were you at that meeting with the lessor? Can you recall that?

Mr. Roush. I don't——

Mr. Stangeland. That is where he produced that different copy.

Mr. Roush. I don't know how they came to my attention, and I can't recall any longer. Is there any indication in the memo? None of the memos seem to ring a bell. The name Mr. Cole means nothing to me.

Mr. Stangeland. It doesn't appear that you were at the meeting with Mr. Cole, no. That was a meeting that Mr. Harvell conducted because he has signed the memo and put it in your file, his file, and some other files.

Mr. Roush. OK.

Mr. Stangeland. Mr. Trietsch, are you aware of any memo on that 3-30-72 meeting to show who might have been in attendance where the lessor produced the different copy of the solicitation?

Mr. Trietsch. The Inspector General report does not indicate specifically who was present, but I believe that there are memoranda in the files that indicate who attended the meeting. I believe that EPA employees, as well as GSA employees may have attended the meeting.

Mr. Stangeland. But it didn't state specifically the names of who they were?

Mr. Trietsch. It may have. I don't have that with me, but I would be happy to provide that.

Mr. Stangeland. If you could.

[GSA's Inspector General's Office subsequently advised the memoranda could not be located and no additional information was available to identify participants at that meeting.]

Mr. Stangeland. Then there is a memorandum from Mr. Harvell to Mr. Innamorati stating—this is dated April 18—until all current studies regarding the Government's position in this matter are reviewed, it has been determined not to withhold rental payments.

So it's a retraction, then, of the Barton letter and the decision of the March 20 meeting to withhold rentals. Who would have made that decision and how would it have been arrived at?

Mr. Roush. May I take a look at that correspondence to see if there is anything that would refresh my recollection?

Mr. Stangeland. Yes. [Document provided to the witness.]

Mr. Harvell wrote the memorandum but I am wondering who authorized it? Did he do that? Did someone else authorize that? Was the decision made after consulting counsel? Was it a joint GSA decision, or what?

Mr. Roush. The memorandum doesn't ring a bell with me. It shows that Bernie Adamec drafted it for Mr. Harvell's signature. He would have had the full authority to make this decision on his own, particularly if I happened to be absent from the office and even if I wouldn't have been absent, he would have had the authority.

Mr. Stangeland. Would he come to that decision based upon advice of counsel or what?

Mr. Roush. I would most certainly expect so. Again, the issue of—here's a sentence that probably carries the bulk of the weight for the reason for the memo. Upon meeting with the lessor on March 30, 1972, he produced a copy of a solicitation that differed entirely regarding the cafeteria requirement. The Government's position in that matter—we have determined not to pursue further action against the lessor until the studies are completed, essentially is what it says. I'm paraphrasing it.

Mr. STANGELAND. I wonder who "we" is?

Mr. ROUSH. "We" would refer to the Government. It would be the Office of Operating Programs, GSA.

Mr. STANGELAND. Did Bresler ever call you directly to discuss some of these alleged problems in dealing with GSA people handling this matter on a day-to-day basis?

Mr. ROUSH. I have no recollection of it, sir.

Mr. STANGELAND. But after the Harvell memo, then you wrote a letter to the lessor advising him that——

Mr. ROUSH. As a result of the meeting in my office with Mr. Adamec, I would have probably notified him of what our internal determination was, yes, sir.

Mr. STANGELAND. And you don't recall then what steps were taken to require him to comply with the lease? Can you recall? I questioned, and I think got some concession from the previous witnesses. Was there a great deal of confusion then after that new page 27 appeared, or that different page 27?

As you recollect that lease—and it's beginning to get confusing to me, too. But first of all, the letter of acceptance specifically states that the cafeteria is to be tied to the delivery of the office space. But the requirement for the cafeteria comes under "special requirements." It was brought out at the time we were discussing this; it was the first I heard of it, there was an executive cafeteria. I missed the EPA presentation yesterday. In Mr. Adamec's papers there is a suggestion of the possibility of an executive cafeteria in a private commercial establishment with hours reserved from 11:30 to 1:30, which to me really had very little or no bearing on the cafeteria question.

Now we have a cafeteria under special requirements; then we have special requirements including, but not limited to, mechanical systems such as exhaust systems, air conditioning, et cetera at Government cost, plus 10, plus 10. Then we have the page 27 which was in dispute where it's very clear that the cafeteria will be furnished by the lessor at his expense.

With all that muddiness, was there a great deal of confusion as to what GSA ought to do? Is that why you went into limbo for 3 years and virtually did nothing? Of course, I understand you left this post shortly after and perhaps weren't monitoring it, but——

Mr. ROUSH. Mr. Congressman, all I can say to you is it caused a great deal of consternation and confusion and I believe that the people that were involved were acting in the best interests of the U.S. Government. It is certainly not a delightful page in the book of GSA work, but my experience during my time that I was associated is that I would see things firsthand, and they certainly tried to do what they could do within proper limits which I find absolutely necessary.

Mr. STANGELAND. Do you recall being aware of Bresler's not wanting to provide the cafeteria because he was providing for construction of a number of commercial establishments for lease to various restaurants?

Mr. ROUSH. I have some recollection that he was attempting to move in that direction, but the GSA position continued "You owe us something."

Mr. STANGELAND. Were you aware, in August 1972, of a letter initiated by GSA stating from the contracting officer's decision and ordering the lessor to provide cafeteria facilities per the agreement, and that the letter was unsigned and undated and apparently never sent?

Mr. ROUSH. I am not aware of it. I would not likely have been aware of it in the position I was in at the time.

Mr. STANGELAND. Thank you. I guess I have no further questions at this time, Mr. Chairman.

Mr. LEVITAS. Thank you, Mr. Stangeland. Mr. Roush, the Inspector General's report on this matter has a portion which reads to the effect that the Assistant Commissioner Mr. Roush rescinded the contracting officer's February 28, 1972 letter by his letter of April 19, 1972, the Government's position languished for a critical period of time starting in 1972. Then it goes on to say a series of actions and inactions led the Board to conclude that a waiver had in fact occurred which can be traced to the series of meetings and exchanges between the Government and the lessor after February 1972.

Here is the way it appears and that is why I hope that you may be able to shed some additional light on this. It appears that people at GSA who were directly involved with the contract, its administration and application, had taken the position that there was a provision in the contract which provided for this cafeteria and that they were getting the runaround by the lessor. Why do I say "getting the runaround by the lessor?" Because there was obviously—even in the memoranda that went out to you—discussions not about whether there was going to be a cafeteria, but what size it was going to be.

Then the point was made that, yes, there was going to be a cafeteria, but the person that had been lined up as the operator wasn't there any longer. And by the way, I have a written waiver on this matter. But when he was asked to produce it, he didn't produce it. It later became an oral waiver. But whether it became that before or after your April 19 letter is not clear.

In consultation with legal counsel, the contracting officer wrote the February 28 letter, tough letter, saying produce that cafeteria or else. Then apparently without—not "apparently"—without discussion with the contracting officer or the project manager with respect to your proposed action, you say "I am reversing these people and we are going to pull back until some other things are done." Then from the record, nothing else is done. Nothing of any documented significance. Certainly not with the degree of elaborateness that most things seem to be done in GSA or other agencies in town.

So it seems that it sort of points at Larry Roush to prompt the inquiry why did you do it. And if you did it for the reasons you say you did it, then why don't they show up in the record someplace? Because at the very least, you were aware of the fact that you were overruling your contracting officer and your project manager; you knew there had been this back and forth. And instead of saying, "OK, we are going to pull back right now on March 31—or whatever the date is—but we are going to find out and get on to it," that didn't happen, not according to the record at least, nor according to your recollection.

So, therefore, it all comes back to you now. If Mr. Kunzig or Mr. Sampson or someone else had said that is the decision that we want you to reach, and you work for us—that's one thing. But the rest of it quite frankly does not add up. I must be candid with you. It does not add up. In the course of events it is a freak. There is nothing that predicts it. There is nothing that corroborates it.

So for that reason, it just seems that, as we finish up and get down to writing our conclusions, we have to draw reasonable inferences from available facts and while I am not prejudging those facts it just seems to me that, as I have outlined it to you, there has got to be some other explanation, I would think. I just wonder if you could respond to that?

Mr. ROUSH. I could. There are one or two places where I think perhaps I didn't make myself clear.

No. 1, I did not reverse the contracting officer without the knowledge of the project manager. I believe that reversal came about as a result of the meeting with the project manager and representatives of Town Center Management. So certainly it was not without the project manager.

Second, I admittedly am 10 years later, but I do not recall that I saw the contracting officer's opinion on this matter before my correspondence went out. Did they have close dates?

Mr. LEVITAS. Excuse me?

Mr. ROUSH. I pointed out that this was not without the knowledge of the project manager, Mr. Adamec, because he would have been in the meeting with me and I don't have any idea who else would have been there.

Mr. LEVITAS. Which meeting is that that you are referring to?

Mr. ROUSH. I believe the meeting Mr. Adamec reported bringing Mr. Bresler to my office.

Mr. LEVITAS. I don't recall—I know you have referred to such a meeting, but I don't recall——

Mr. ROUSH. I think Mr. Adamec testified to it earlier today.

Mr. TRIETSCH. I believe you are referring to the March 30, 1972, meeting.

Mr. LEVITAS. March 30.

Mr. ROUSH. OK.

Mr. TRIETSCH. It was approximately 2 weeks after that meeting that Mr. Roush wrote the lessor that the Government would not withhold the rent as previously indicated by the contracting officer on February 28.

Mr. ROUSH. Mr. Chairman?

Mr. LEVITAS. Yes.

Mr. ROUSH. Was it clear to you today in the testimony that was being given that although the threats were used for withholding rent, it was not a real availability, on advice of counsel?

Mr. LEVITAS. There was some reference——

Mr. ROUSH. I believe——

Mr. LEVITAS [continuing]. Where someone said it could be psychological, but they were not sure it would hold up. It certainly got Mr. Bresler to respond.

Mr. ROUSH. With the loss of that threat as a real thing, a GSA contracting officer loses a lot of authority.

Mr. LEVITAS. Mr. Trietsch, or Mr. Mitchell, could you assist us in identifying the meeting that Mr. Roush is talking about?

Mr. TRIETSCH. I am almost sure that it is the March 30, 1972, meeting. I think Mr. Mitchell agrees.

Mr. Levitas. I don't have any document that indicates who was present at that meeting or where it occurred. Do your records disclose that?

Mr. TRIETSCH. I believe the meeting is referenced specifically in documentation that we have either in the Inspector General's office or with the Public Buildings Service. Based on these documents, at the bottom of page 5 of the Inspector General's report, it indicates that at the meeting on March 30, 1972, the lessor produced a version of paragraph 10, Solicitation 55. And as I testified earlier, the record will indicate that that is the first time that the lessor produced such a copy, and that was approximately 1 month after Mr. Barton's February 28 letter requesting the withholding of rent. I am almost certain from the chronology that would be the meeting that Mr. Roush has just referred to.

I believe that meeting took place in Mr. Roush's office attended also by EPA officials as well, although I would have to check the record on that, Mr. Chairman.

Mr. LEVITAS. That was a meeting on March 30?

Mr. TRIETSCH. March 30, 1972.

Mr. LEVITAS. The only thing that I find is a document apparently from the Deputy Assistant Commissioner for Operating Programs to the Assistant Commissioner for Building Management.

Mr. TRIETSCH. Mr. Chairman, if I may shed a little bit of light on that, also on page 6 of the Inspector General's report in the footnote, and this makes reference also to something that Mr. Stangeland previously brought up, there were two memoranda from the Assistant Commissioner for Buildings Management to the Assistant Commissioner for Operating Programs, Mr. Roush. The first was written in January 1972; the second in March 1972. What is notable about these two memoranda are the responses. The first response, that is to the January memorandum from the Assistant Commissioner for Buildings Management, Mr. Innamorati, was prepared and sent by Doug Harvell, Mr. Roush's deputy, on March 28, 1972. This March 28 response supported the need to advise the lessor of the necessity to comply with the cafeteria provision.

Now, the meeting we just discussed took place on March 30. I would have to check the records, but apparently it was in Mr. Roush's office, attended by Mr. Bresler, Mr. Roush, and certainly several other GSA officials, if not EPA officials.

Subsequently, Mr. Harvell, again on behalf of Mr. Roush, responded to the second memorandum from Mr. Innamorati which was written on March 10, 1972. This response to that memorandum is April 18, 1972. It essentially reversed the position of the earlier March 28th memorandum that Mr. Harvell had written to Mr. Innamorati.

So that narrows the chronology even more; so that the days between March 28, 1972, and April 18, 1972, are crucial in that the meeting that occurred between those dates on March 30, 1972, is obviously notable with respect to the reversal of the decision taken by Doug Harvell on March 28, namely, to compel the lessor to comply with the cafeteria provision. This was apparently reversed for a variety of reasons as Mr. Roush noted, but principally, according to the record, because Mr. Roush determined that there was a need to explore additional facts, and get some specific legal clarification.

So, the 2-week period, between March 28, 1972, and April 18, 1972, is crucial. It was during that period that some very significant decisions were made, presumably by Mr. Roush, and backed by other GSA officials, with respect to compelling the lessor to comply with the cafeteria provision.

Mr. LEVITAS. Well, the April 18 memorandum refers back to a meeting, as you point out, on March 30 at which the lessor was present, and again I am not clear from anything I have seen where that March 30 meeting was held, or who was present. That apparently is the first time that Mr. Bresler came up with a different version of the agreement.

Mr. TRIETSCH. Yes.

Mr. LEVITAS. Although in his prior dealings with GSA up to March 30, there was the contention made that he had had the cafeteria requirement waived, or that the person who was going to operate it backed out. This was the first time, the March 30 meeting, that he contended there was no requirement to begin with.

Now, Mr. Roush, I wonder, since you sat in on that meeting I gather, from what you have testified.

Mr. ROUSH. I believe so, yes, sir.

Mr. LEVITAS. This was the first time. Did it strike you odd that after all the previous discussion about a cafeteria, here on March 30, approximately a month after he was told he was going to get his rent withheld, he found and produced a copy of the lease that said he didn't have to build it to begin with?

Mr. ROUSH. It certainly did, sir. That is exactly why I asked that the work and study be done to find exactly what was our position, what had happened. Unfortunately I did not stay there long enough to see all the conclusions. As Mr. Trietsch, I believe, has pointed out, the General Counsel was exploring the case and options in August 1972. I was somewhere else by then.

Mr. Chairman, on your earlier question, too, I think the testimony earlier today from GSA pointed out that there were changes being made in the requirements of what size cafeteria, still at—certainly at this point in time, was it 13,000 square feet? Was it 10,500 square feet? Or would it be tomorrow, 8,000 square feet?

Mr. LEVITAS. I got the impression from the documentation and the discussion of that, that they were having a hard time with Mr. Bresler and they thought rather than go to the mat on it, if they scaled down the size of the cafeteria he might respond by saying, "OK; I will do that." I mean that was the impression I got.

Mr. ROUSH. That was not my impression as I recall at the time. It was simply trying to solidify our position so that we could make a battle, a legal battle, find out what grounds we have got and then proceed.

Mr. LEVITAS. Do you have any questions?

Mr. NOLEN. No.

Mr. LEVITAS. Mr. Stangeland?

Mr. STANGELAND. No questions.

Mr. LEVITAS. I have no further questions at this time. I would like to observe that in just a moment, it is my intention to recess the hearing subject to the call of the Chair, and to state that the witnesses who have appeared are still under oath and are subject to recall; and also to announce that immediately following the meeting of the full committee tomorrow, there will be a meeting of the subcommittee for purposes of considering procedural matters for further hearings into this subject.

Mr. Roush, I want to thank you for your attendance. We may have some supplementary questions and, if so, we will be in touch with you about that as well. Thank you for your participation.

Mr. ROUSH. Thank you.

Mr. LEVITAS. The subcommittee stands in recess subject to the call of the Chair.

[Whereupon, at 5:05 p.m., the subcommittee recessed to reconvene subject to the call of the Chair.]

REVIEW OF GENERAL SERVICES ADMINISTRATION'S LEASE MANAGEMENT AT WATERSIDE MALL

THURSDAY, DECEMBER 3, 1981

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Washington, D.C.

The subcommittee met, pursuant to adjournment, at 10 a.m., in room 2167, Rayburn House Office Building, Hon. Elliott H. Levitas (chairman of the subcommittee) presiding.

Mr. Levitas. The Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation will please come to order.

Earlier this year, we began hearings related to a lease agreement between the Federal Government and a Washington, D.C. management company to acquire the use of space in the Waterside Mall complex. For reasons not yet fully understood, a cafeteria that was called for in the original lease agreement was never built. To this day, a major Federal agency, the Enviromental Protection Agency, is without cafeteria facilities for its 3,000 employees at Waterside Mall.

More is involved than the apparent failure of the General Services Administration to protect the Government's interest in a contractual obligation of 10 years ago. The members of this subcommittee seek sufficient understanding of GSA's leasing program to determine if this was a unique, isolated case or a way of doing business that raises fundamental questions about the entire space acquisition and management program.

The so-called missing cafeteria was required by a space rental agreement in 1971 between the General Services Administration and the Town Center Management Corp. I think it is fair to say that there is rather uniform consensus on the fact that a cafeteria was called for and, indeed, the Board of Contract Appeals so found. Indeed, the Federal Government, the taxpayers of this Nation, are each month paying rent for that cafeteria which was never built and is missing.

It is hoped through these hearings we will once and for all determine what led to this situation, what led to the lack of aggressiveness by GSA in securing full compliance with the provisions of the lease agreement.

We will hear today from former employees of the GSA who were directly involved in the negotiations of the lease agreement. Maybe there is a satisfactory explanation for what, on the surface, is a very troubling episode. Officials of the present General Services Administration and the Environmental Protection Agency also will have the opportunity to report on the status of their investigations into the missing cafeteria and to explain the contents of a September 9, 1981 audit report. We will want to hear, as well, about the result of an October meeting among the principals about reimbursement to EPA for services not rendered.

The responsibility of this subcommittee is clear. We hope the Waterside Mall case will provide us with information and insights about the multimillion dollar GSA leasing and space procurement program. Up to this point, I must say your Chairman has had some trouble understanding what has been going on.

I hope by the end of today that won't still be the case, and certainly by the end of these hearings that will not be the case.

I wonder if my distinguished colleague, Mr. Solomon, has an opening statement at this time.

Mr. SOLOMON. Yes, Mr. Chairman.

From the record that has thus far been made about this project, it certainly appears to me we are talking about some matters of considerable concern. If the management of this lease was such that an important component was lost in part because of unclear language of the lease as it deals with the cafeteria, then I can't help but wonder how many other leases there are nationwide that have potential problems like this one. I will be very interested to hear what has been done and what is being done to control this situation and to prevent future problems.

Mr. LEVITAS. Thank you, Mr. Solomon.

Before we begin the testimony from witnesses today, I think it would be useful to the committee and for the record to have our counsel briefly sumarize what we have ascertained thus far so we can put these hearings today in that perspective and give that background.

Mr. NOLEN. Mr. Chairman, to date, subcommittee staff has interviewed numerous individuals directly and indirectly involved in the Waterside Mall project over the past 10 years.

From various sources, we have accumulated and analyzed numerous documents, letters, memoranda, as well as the lease agreement with its 42-plus supplemental agreements.

In addition, we have reviewed several investigative reports conducted by the GSA and EPA, and discussed those reports with several available investigators.

We have reviewed the transcripts of the Board of Contract Appeals hearings, as well as the GSA Board's decision on the missing cafeteria facility.

Finally, Mr. Chairman, we have reviewed the testimony presented by witnesses before this subcommittee in September.

Details of the pre-award period and the lease negotiation, itself, as well as how the various components of the lease were agreed to, will be discussed at today's hearings with those people who actually negotiated the lease agreement.

During the 2 days of prior hearings, we discussed the administration of the lease agreement which led to the Board's decision that a de facto waiver had occurred.

In order to provide some background of the provisions of the lease for a cafeteria, I would like to identify the four items contained in the lease agreement which were to be administered by GSA officials:

First, a GSA Basic Solicitation for Offer No. 55, which contained a cafeteria provision on page 27, subparagraph 10(a), calling for the lessor to provide the cafeteria at his expense, in his space, and without cost to the Federal Government.

Second, the first offer from the lessor dated January 27, 1971.

Third, an amended offer from the lessor dated February 12, 1971, which defined the cafeteria provision under special requirements and stated that a cafeteria or cafeterias would be provided in accordance with paragraph 10(a) of the solicitation. The end of the section stated that all special requirements shall be provided where practicable, pursuant to Government requests, at actual cost, plus 10 percent overhead and 10 percent contractor's profit.

Fourth, the last item was a letter dated February 19, 1971, accepting the offer. This letter of commitment stated that a cafeteria was to be placed in operation on a phased basis, to be expanded as additional space was delivered, as EPA personnel moved in, and at a level of service to be determined by consultation between the Government and the lessor.

Now, with your permission Mr. Chairman, Ms. Martha Downie will give a synopsis of the 10-year history of this lease as it was discussed during those hearings.

Ms. Downie. On February 23, 1971, the Waterside Mall lease agreement was signed and the lease package turned over to a newly organized Office of Operating Programs at GSA's central office to be administered.

GSA's then-contracting officer, Arthur Barton, and the project coordinator, Bernie Adamec, who followed progress of the project on a day-to-day basis, testified they had made several attempts during 1971 and early 1972 to find out from the lessor when the required cafeteria would open and what other food facilities would be established in the complex.

When the lessor, Mr. Bresler, advised that his negotiations with several cafeteria operators had fallen through, but other food facilities he was negotiating for would satisfy the needs and requirements, Barton, as contracting officer, sent Bresler a letter, dated February 28, 1972, reiterating the cafeteria requirement and advising that rent would be withheld as of March 31, 1972, unless there was evidence of progress for a cafeteria.

After the February 28 letter, Bresler took the position that GSA had waived the requirement and restated his intent to provide other food facilities to satisfy EPA personnel needs. GSA officials testified that they checked their files and talked with others at GSA to determine whether a waiver had, in fact, been given. Finding no evidence of it, they decided at a meeting about March 20, 1972, to pursue withholding rent.

Mr. Adamec then arranged a meeting on March 30, 1972, with Bresler, Larry Roush, the Assistant Commissioner of Operating Programs, and himself—and possibly others—to discuss the situation. At that time, Bresler produced a different page 27 from his copy of solicitation No. 55 and insisted he did not have to install a cafeteria. That page 27 would have given GSA the right to put in its own cafeteria and other vending facilities.

In a letter dated April 19, 1972, Mr. Roush advised Bresler that rent would not be withheld until studies of the situation were completed.

Despite concern about Bresler's claims, most felt that a cafeteria was required. There was considerable discussion within GSA and with EPA about possible alternatives and what it might take to put in a cafeteria. GSA's Buildings Management Division, which housed the concessions branch people who were involved in the matter, advised Roush in May that a cafeteria was needed, but with the other facilities Bresler intended, it could probably be reduced in size and seating. This was put forth as a possible inducement to some potential cafeteria operator and Bresler was urged to try to find one. He was also pushed to pursue other food facilities he had promised by September 1.

In June 1972, Roush was replaced as Assistant Commissioner of Operating Programs by a Ronald Zechman. Correspondence between Zechman and EPA indicated EPA had a critical need for expansion space and a concern about food facilities and the cafeteria.

In July or August 1972, GSA's counsel advised that the best approach would be to withhold occupancy of space until a cafeteria was put in and that withholding rent would probably be illegal under the lease clauses—although it might have some psychological advantage. Documentation on the counsel's recommendation is scanty but is referred to in the project coordinator's weekly report. Witnesses recalled various conversations with counsel on the issue but do not recall any written recommendation.

Also in August 1972, a contracting officer decision was prepared directing Bresler to provide a cafeteria. It threatened Government action if he did not—although that action was not specified—and advised Bresler of his right to appeal. The letter was never sent—and witnesses could not explain why. There was, however, a meeting in late August between Zechman and Bresler and the GSA position was stated. Bresler threatened legal action if GSA pushed for the cafeteria, insisted again he was not obligated to put one in, and said the other food facilities would soon be in the mall.

Dennis Trietsch, of GSA's Inspector General's Office, discussed the conclusions of the July 1980 report. He said that the contracting officer and project coordinator lost the necessary clout to effectively deal with the lessor when the basic operational decision for administering the lease was assumed at the level of the Assistant Commissioner of Operating Programs. Lines of authority became obscure and the roles of each of the components of Public Buildings Service lost clarity. There was confusion and internal conflict among the various PBS officials technically responsible, in part as a result of the shift from withholding rent. This lack of consistency was influenced by the push to get EPA people into space, particularly senior employees, and by Bresler's approach of providing other food facilities at the mall.

Witnesses could not recall any further effort to install a cafeteria after the late August 1972 meeting and said that some restaurants did open in the fall of 1972. The cafeteria issue was dormant after that until 1975. It was the article in the Federal Times, dated September 3, 1975, highly critical of the Government's failure to require Bresler to install a cafeteria, that brought the matter back into focus.

John Galuardi admitted that it was the Federal Times article that triggered renewed action on the cafeteria. He also said that, after hea had sent an August 1975 letter to the Federal Times reporter, containing a statement about an oral waiver by GSA, he retracted that statement during a phone call with the reporter.

GSA determined in late 1975 that the lease called for a cafeteria, and a concessions branch survey determined one was needed. Bresler did not think so, and that led to a contracting officer decision of March 17, 1976—signed by Earl Eschbacher—ordering installation of the cafeteria. Bresler appealed the decision on April 19, 1976. The appeal was dismissed in August 1976 since settlement negotiations were underway, but when disagreements arose about size and seating for the cafeteria and who was going to pay—Bresler expected GSA to pay cost, plus 10 percent, plus 10 percent—the Government reinstated the appeal.

The Board held 6 days of hearings in July 1978 and the decision came out on March 31, 1980. The Board found that the pre-award negotiations, the structure of the solicitation, and the post-award conduct of both Bresler and GSA officials clearly established that the lessor had the contractual obligation. But, the Government's conduct and inaction over the years constituted a de facto waiver of its contractual right, and it was thus estopped from further demands that the lessor provide the missing cafeteria.

The February 28, 1972 letter, according to the Board, was the first and only attempt to force Bresler to install the cafeteria, and after that the Government failed to withhold rent or refuse occupancy of space. Further, the Government accepted (1) space originally allocated for a cafeteria and (2) all of the space under the original lease as of February 1974 without stating any reservations and failed to renew its threat until after adverse publicity in 1975.

GAO testified that their report was being completed about the time the appeal was reinstated. Their recommendation to GSA at the time was to establish a firm opening date for a cafeteria. If the date was not met, GSA should put in a GSA cafeteria and withhold rent for damages determined from the time the cafeteria was required to the opening date. And, if GSA put its own cafeteria in, withhold rent also to cover rent and installation.

GSA did not act on the recommendation. GAO concluded GSA was not aggressive enough about the lease. They found no conscious decision not to enforce the clause, but could not determine why it was not enforced. GAO counsel commented on the GSA counsel decision of August 1972—that withholding rent would be illegal under the clauses in the lease. Such a decision brings all sorts of problems into play, and he suggested that some standard clauses in GSA contracts should be modified to fit this type of situation.

Peter Ting, of GSA's Appeals, Claims, and Litigation Division, litigated GSA's case before the Board. He testified that there were three major issues of concern to him:

First, was the basic ambiguity of the contract, particularly the lessor's February 12, 1971 amended offer. The special requirements section states that a cafeteria shall be provided in accordance with paragraph 10(a) of schedule B, part 3, of the solicitation, and 10(a) says a cafeteria will be provided at no cost to the Government. But it also says that all special requirements shall be provided where practicable pursuant to government request at actual cost, plus 10 percent overhead and 10 percent contractor's profit.

The commitment letter language accepts the cafeteria on a phased-in basis, but doesn't specify 10(a). The language is unclear and could be construed to mean the lessor has, in effect, given the Government an option to buy a 10(a) cafeteria. The Board did not address the cost; only that the contractual right to a 10(a) cafeteria was included in the lease.

The second matter of concern was the different pages 27, and the only way he could establish the validity of the GSA version was through the testimony of Doris Frankenfield, who put the solicitation together, that she was positive both solicitations contained the 10(a) version of page 27. Ting conjectured the Bresler page 27 could have come from an old solicitation, but it was the Board decision that addressed a possible solicitation No. 40 and stated that "* * * it appears that appellant has amalgamated portions of two different solicitations, solicitation No. 55 and perhaps the previously described solicitation No. 40."

Ting's third problem was the lack of explanation of why there was no action taken from late 1972 to 1975.

He expressed his view that the initial ambiguity of the basic contract documents plus the page 27 discrepancy, which created uncertainty about the cafeteria requirement, caused some confusion within GSA circles which perhaps led to a less-than-aggressive pursuit of the cafeteria.

Ting also said that he could not now move to reconsider the decision since it is past the Board's 30-day time limit and that the only other means to reopen the case would be as a result of new evidence of fraud.

Mr. Chairman, Bill Nolen will discuss several issues brought out during the September hearing.

Mr. **Nolen**. Mr. Chairman, there were several issues brought out during the September hearings which were of concern to subcommittee members and which will be further discussed at today's hearings. I will refer to them only briefly at this point.

First, during testimony, Mr. Alvin Coleman, special agent in the Office of Investigations at GSA, stated that in past investigations there were occasions when a solicitation incorporated into a lease agreement was missing from the file. He also testified that the wording of some lease documents is so poor that it prevents a clear understanding of the Government's contractual rights and responsibilities—not unlike what was brought out about the Waterside Mall lease. Mr. John Galuardi, testifying in behalf of GSA, stated that several procedures had been implemented in recent years which would prevent the recurrence of a situation, such as the case of the missing cafeteria where a right to which the Government is entitled is lost through a de facto waiver.

In response to a joint letter from you, Mr. Levitas, and Mr. Stangeland, requesting the GSA Inspector General to review these matters and provide the subcommittee with the results, Inspector General Sickon indicated that his office was evaluating data to identify those recurring problems related to GSA's leasing operations. We will hear today from Mr. Sickon on the status of that review.

We also hope to hear from the Inspector General's staff as to whether they were successful in efforts to identify all participants at the meeting held on March 30, 1972, when Mr. Bresler presented his version of page 27. And, whether they located a copy of GSA's early solicitation for offer No. 40.

Second, a few days after the September hearings, EPA provided subcommittee staff with an audit report dated September 9, 1981 that reflects their contention that restitution should be made to EPA. Staff has since learned that EPA's and GSA's Inspector General staffs have discussed the matter and that the audit report has been revised. We will be hearing today from EPA and GSA officials about their efforts to resolve this issue.

Third, Mr. Galuardi, during testimony in September, relayed a message from GSA Administrator Carmen that GSA would reopen the investigation regarding the Waterside Mall lease. We anticipate hearing testimony today that will provide information about that investigation.

Mr. LEVITAS. Thank you, Mr. Nolen and Ms. Downie, for a good summary of what we are trying to put in perspective, the rather tangled, complicated history of this matter.

Now, I think it would be appropriate to go forward with testimony from the witnesses. I believe all of the witnesses at the table have already been sworn and are still under oath with the exception of Mr. Antonelli.

Am I correct, Mr. Coleman?

Mr. COLEMAN. Yes.

Mr. LEVITAS. Mr. Florence.

Mr. FLORENCE. Yes.

Mr. LEVITAS. Mr. Antonelli, would you please rise so I can administer the oath?

Do you solemnly swear the testimony you will give before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ANTONELLI. Yes, I do.

Mr. LEVITAS. Thank you very much.

TESTIMONY OF WILLIAM ANTONELLI, CHIEF, LEASING BRANCH, OFFICE OF INSPECTIONS, OFFICE OF INSPECTOR GENERAL, GENERAL SERVICES ADMINISTRATION; ALVIN COLEMAN, SPECIAL AGENT IN CHARGE, OFFICE OF THE INSPECTOR GENERAL, GSA; AND LYNN FLORENCE, SPECIAL AGENT, OFFICE OF THE INSPECTOR GENERAL, GSA

Mr. LEVITAS. My first question goes to Mr. Coleman. Since you are the agent in charge, would you briefly provide the subcommittee with the background of the report which was completed by you and Mr. Florence on November 6, 1980, and since the report was compiled in sections and the report inserts are of different dates, it could be confusing to those present today who are not that familiar with it.

Mr. COLEMAN. Yes, sir.

Do you mind if I defer to Mr. Florence, who is far more familiar with the report, since he conducted the investigation?

Mr. **Levitas**. Very well.

Mr. **Florence**. If I may, Mr. Chairman, the investigation was primarily concerned with the arrangement of the lease, itself. That is what transpired when the lease was being hammered out, and prior to that, there was another investigation which dealt specifically with the cafeteria issue. These are two different investigations. This investigation was very narrow in scope and dealt merely with the parties who were involved in the actual negotiations.

Mr. **Levitas**. Mr. Antonelli, I understand you have a prepared statement concerning your work in this regard, and if you would now provide that information to the subcommittee.

Mr. **Antonelli**. Thank you, Mr. Chairman.

I am pleased to have been afforded the opportunity to be called before this subcommittee to explain the facts and circumstances surrounding the development of two reports I wrote on GSA's lease at the Waterside Office Mall, located in Washington, D.C.

The first of these reports concerned the negotiation for the lease. The second report, which is a supplemental report, concerned the missing cafeteria.

Before I discuss these reports individually, I think it would be beneficial to provide some background information on the Public Buildings Service [PBS] Task Force, of which I was a member at the time I wrote these reports on October 31 and November 2, 1978. I offer this information to place the results of these examinations in the right perspective.

The PBS Task Force was formed in November 1977 in order to use the knowledge and experience of persons inside the program as a means of penetrating suspected irregularities that were surfacing in PBS contract programs. I was detailed to this task force in mid-1978 to participate in a three-man leasing unit that, over the course of its 12-month period of operations, focused on major GSA leases that had a history of controversy and/or suspicions of irregularity.

At the time of this detail, I was a realty specialist permanently assigned to GSA's Office of Space Management. The Office of the Inspector General was not to be formally established in GSA until after the passage of the Inspector General Act in October 1978.

Many of the reports prepared by the task force, including those I wrote on the Waterside Mall lease, were forwarded to investigators to provide recommended avenues for investigation. Most of these reports, including those I wrote on the Waterside Mall lease, contained findings that were sometimes circumstantial in nature and conclusions that were frequently based on reasoned opinion. The decision to refer reports for investigative review was made on a case-by-case basis.

The concept underlying the formation of the task force was that the use of persons having technical knowledge of contracting functions, when combined with an examination approach that incorporated certain investigative methods, would be an effective device for exposing fraud, overpayments, and mismanagement. The task force proved the concept worked, and, as a result, the Office of Inspections was created within GSA's Office of Inspector General in June 1979.

My initial examination and report on the Waterside Mall lease arose from my supervisor's recollection, which was based on heresay, that a binding lease contract had been amended in favor of the lessor as a result of intervention by the then Administrator of GSA. The amendment involved deleting an option provision worth approximately $860,000, without obtaining any compensation in return. The scope of my examination was thus to refute or corroborate this story.

The research supporting this examination included a review of GSA lease files, and discussions with GSA's chief negotiator and one other member of the three-member negotiating team. In my mind, the resulting information, although presenting a circumstantial case, indicated a definite possibility that high-level influence did occur and that it resulted in the deletion of an option favorable to the government after a contract had been signed.

I based this conclusion of high-level influence on two major pieces of information. First, GSA's chief negotiator could not recall to me whether the option had been deleted after a contract had been entered into. He did say that the administrator had rebuked him for being too aggressive in negotiating the lease.

Second, GSA's lease files at the time of my examination did not contain either the original or a copy of the contract letter. The only award document I found originated from the lessor's attorney, who had submitted the document to GSA's Board of Contract Appeals in connection with a dispute over GSA's right to a cafeteria. The print on this document is extremely light, and portions of the letter are virtually unreadable. Although the lessor signed the document, there is neither a date of acceptance nor a Government signature indicating acceptance. These discrepancies, together with the extremely poor quality of the copy, and the absence of an award letter in GSA's lease files, created doubt in my mind concerning the authenticity of the award document furnished by the lessor's attorney.

I want to add that no single piece of information in this examination was sufficient in my mind to warrant further inquiry beyond what I had done. But the pattern of the information indicating the possibility of high-level influence and a corresponding lack of opposing findings, justified in my mind recommending specific avenues for investigation.

My supplemental report on the Waterside Mall lease focused on the narrow issue of why both GSA and EPA stopped pressing for a cafeteria. The period of inaction with respect to enforcing GSA's right to a cafeteria facility spanned almost 3 years, from December 1972 to September 1975. The facts and circumstances identified during this examination justified in my opinion consideration of further inquiries that might shed some light as to why, on two different occasions, GSA appeared ready to insist on a cafeteria facility but then backed off.

The first occasion occurred in February 1972 when the contracting officer wrote a letter placing the lessor on notice. Follow-up GSA action on withholding rent was not pursued.

The second occasion occurred in August 1972, when GSA prepared, but did not issue, a contracting officer's final decision letter which contained language directing that the lessor either take action to furnish a cafeteria, or file a formal appeal under the disputes clause of the lease.

This concludes my prepared statement. I would be pleased to answer any questions the subcommittee might have concerning this statement and the two reports.

Thank you.

Mr. LEVITAS. Thank you, Mr. Antonelli.

Let me start at the end, chronologically, of your findings, or the point at which you were doing your work, and that is the August 1972 effort that originated in GSA but, according to your testimony, did not pursue the contracting officer's final decision that either the cafeteria would be provided or a formal appeal would be taken at that time. That was August 1972.

Mr. ANTONELLI. Yes, sir.

Mr. LEVITAS. Were you able in the course of your investigation to ascertain why nothing was done between August 1972, and the event of 1975, after the newspaper report about this matter? The reason I ask you that is, as I read the Board of Contract Appeals decision, it is that period of time which was critical in causing the Government, at least at this point, to apparently have lost its rights which it had under the contract.

Mr. ANTONELLI. That is a difficult question to provide a direct answer to. It is the question that I tried to focus on.

I found it odd that both GSA and EPA stopped pressing for a cafeteria facility. I interviewed several persons who had worked with EPA at that time.

The result of those interviews was that—and I asked them, why did the cafeteria issue die in EPA and what I learned from those interviews was that it was their understanding GSA had willingly accepted the lessor's plan and existing restaurant facilities in lieu of the cafeteria facility.

They couldn't corroborate this with any documentation. Their memories were not perfectly accurate, but that was the understanding in my interviews with Mr. Hough and Mr. Nies, who worked with EPA at that time and were in a position where they dealt with GSA on the cafeteria issue.

Another piece of information I have that possibly could suggest that there had been an oral deletion by GSA—I know an oral deletion is not binding, but when Dave Rothman wrote his article about the missing GSA cafeteria, he asked GSA for some information on exactly what had happened during that period of inaction and in the letter GSA wrote—it was written by Doris Frankenfield—she claimed in the letter the cafeteria provision had been orally deleted.

In her testimony before the Board of Contract Appeals, she was not able to provide any documentation that there had been an oral deletion and she changed her mind.

What that could suggest is that she did know that someone in GSA had orally advised the lessor and the contracting officer in GSA to not pursue enforcement of the cafeteria facility.

Mr. LEVITAS. I want to make just one comment.

Early on in your testimony, in fact at several places, you make reference to circumstantial evidence as being the basis for the conclusions you reached.

It comes across to me as being almost a defensive statement apologizing that you don't have an eyewitness, so to speak.

"You have not yet found a smoking gun" to use more recent parlance.

I can assure you, as a person who was a practicing attorney before coming to Congress and tried a number of cases, that circumstantial evidence can, in many instances, be even more compelling than direct testimony. Where a net of circumstances closes around a certain indisputable conclusion for which there is no other rational, reasonable explanation, that is perfectly valid as a basis for making determinations. The Nation is filled with people who have been convicted by circumstantial evidence, so the mere fact it is circumstantial should not in and of itself be a reason for apologizing for whatever reasonable conclusion you, as an investigator, draw from that.

Let me go back now. We talked about what happened from 1972 to 1975. In your testimony you say that when you looked at earlier events surrounding this lease, that there appeared to be some—I think you used the words—"high-level influence."

One of the items appears on the second page of your testimony and you say "a binding lease had been amended in favor of the lessor as a result of intervention by the then Administrator of GSA."

Who was that person?

Mr. ANTONELLI. Mr. Kunzig.

Mr. LEVITAS. With whom did the interview to which you refer occur?

Mr. ANTONELLI. The GSA's chief negotiator for that lease was Mr. Shipp.

Mr. LEVITAS. The statement on page 3 also—we are talking now, I take it, about sometime in 1971, is that correct? The early part of 1971?

Mr. ANTONELLI. That is right.

Mr. LEVITAS. Where the high-level influence issue arises that is described on page 3? That would be the early part of 1971?

Mr. ANTONELLI. Yes, sir.

Mr. LEVITAS. And that is when the terms of this contract are still being worked out.

You say in your testimony that the GAS chief negotiator, Mr. Shipp, could not recall at the time you interviewed him whether the option had been deleted after the contract had been entered into, but you did say that the Administrator had rebuked him for being too aggressive in negotiating the lease.

Was there any particular provision or part of the lease that you are making reference to, or is it just in general?

Mr. ANTONELLI. The negotiations up to the point of GSA'a counteroffer had gone very smoothly. In my interviews with persons that were on the negotiating team, there was no indication that there was any disagreement between the parties up to the point that GSA wrote a counter offer letter and that was on February 19, 1971.

The GSA's counteroffer letter made one significant change over and above what had been offered by Mr. Bresler. The change was an option that would have given GSA the right to lease approximately 300,000 square feet of space on a full service basis instead of on a net basis without utilities.

Mr. Bresler's offer for that space was $5.25 a square foot. The option would have given GSA the right to lease it at $5.50 a square foot.

GSA was estimating utilities at that time at 50 cents a square foot. Therefore, the option provision at $5.50 was more favorable than the net provision which would have come to $5.75 so there was a 5-cents-a-square-foot advantage built into that option.

As I said, the negotiations up to the point of the counteroffer had gone very smoothly.

In my interviews I never had it corroborated directly that that specific option was the cause of intervention by the Administrator, but it would be my conclusion that it was.

Mr. Levitas. And that is the provision that you testimony says had a value to the Government of approximately $860,000?

Mr. Antonelli. Over the 20 years of the lease, the 25-cents-a-square-foot advantage equates to something over $80,000 annually, so over 20 years the cost in present value terms was about $860,000.

Mr. Levitas. Now, Mr. Florence, on November 20, 1980, there is an item called a report insert which you authored. It relates to sort of summarizing findings. You call it a coherent conclusion in this investigation.

In that, the following paragraph appears. I wonder if you could elaborate on it just a little bit as to why you wrote it.

This says the investigation you were participating in focused on alleged irregularities in the circumstances under which the lease was negotiated; that the lease was negotiated in final stages between GSA management and Charles S. Bresler.

The lease negotiations were taken out of normal channels by Arthur Sampson, Larry Roush, and Robert Kunzig. Loy Shipp, who participated in the original negotiations, was rebuked by Kunzig for being too aggressive with Bresler and shortly thereafter was removed from active negotiation.

Is this based upon the report that Mr. Antonelli had done or was it based on other investigations as well?

Mr. Florence. This is based on his report as well as an interview with Loy Shipp who felt himself to be removed from the actual negotiations, as well as the documents pertaining to this.

Mr. Levitas. Thank you. That is all I have at this point.

Mr. Solomon.

Mr. Solomon. Mr. Chairman, you have covered most of the questions that I have, but I want to get a handle on your operations, Mr. Antonelli.

Going back to what the Chairman was speaking about before, when he talked about circumstantial evidence. On page 2 of your statement you say that most of these reports, including those you wrote on the Waterside Mall lease, contain findings that were sometimes circumstantial in nature and also conclusions that were frequently based on reasoned opinion. That seems fair enough to me.

Would it then be accurate to say you developed in your reports an account of what possibly occurred and then your reports may or may not be forwarded to an investigator who attempts to determine what probably happened, going beyond the circumstantial evidence?

Mr. ANTONELLI. I want to give you a little background on my comment about reasoned opinion.

I came from the leasing program, as the other members of the PBS task force also came from different programs.

We had knowledge of the contracting functions in GSA. We are not auditors. We look at the facts, we do the research, and then we exercise judgments based on our knowledge.

We go beyond the traditional limits of an audit report.

When we were in the PBS Task Force, we, in reviewing files and conducting interviews, received many areas of what you could call suspicion, but we would take those things further.

We wouldn't simply turn them over to investigators. We would go into them further.

Mr. SOLOMON. When you say "we"——

Mr. ANTONELLI. I mean the members. Yes.

The procedure wasn't simply that you stopped when you suspected something. You would go further into it, further into the files, further into the interviews, and try to see what was really there.

Referrals to investigators were not automatic. A lot of things that were initially thought of as suspicious never went to investigators. So the decision on referring cases was made on a case-by-case basis.

A lot of them did not go to investigators and in my report, before I would send it to investigators, I had to feel that there was a pretty good case and it would be worthwhile to look into it.

Mr. SOLOMON. Along that same line, did you know personally when you completed a report whether it was actually forwarded to an investigator? What was the procedure that follows there?

Mr. ANTONELLI. You have to understand that this was a task force. It was not a formal organization. We did not have formal procedures. The scandal in GSA was unfolding very quickly then. Most of the time reports were not transmitted by memo. I would give the report to my supervisor and this may seem hard to believe, but in very many cases I would not know what happened to the reports.

Mr. SOLOMON. You would not know what happened?

Mr. ANTONELLI. That is right.

Mr. SOLOMON. So in other words, when you forwarded a report, were there any instances where you actually became involved with that investigator, and after that report had been investigated did anyone come back to you and work with you?

Mr. ANTONELLI. My general answer to that is no, I would not be involved. There were a few exceptions. The Waterside Mall reports that I wrote, I did not participate in any follow-up.

Mr. SOLOMON. How did most of these cases you worked on develop? In other words, in the Waterside Mall matter, you state that it started because of some remarks your supervisor recalled hearing about a binding lease contract being amended in favor of a lessor. Is this how most of the reports get started?

Mr. ANTONELLI. Right. Being from the program, we had a knowledge of which leases had controversy, and very seldom was a lease selected at random. The general rule was that we knew of some controversy before we started looking into it.

Mr. SOLOMON. I see. Do you feel comfortable with most of the reports that you did, especially those forwarded on to investigators, and do you feel comfortable with the Waterside Mall matter?

Mr. ANTONELLI. I feel comfortable with what I said. I did not mean to infer an apology. In my statement I tried to present a balanced perspective. This particular report was very difficult for me to write. I worked for the person that is a prominent person identified in the report, and it was very difficult——

Mr. SOLOMON. You worked——

Mr. ANTONELLI. I worked for Mr. Shipp.

Mr. SOLOMON. All right.

Mr. ANTONELLI. I wish somebody else had had the case, frankly.

Mr. SOLOMON. I do not have any further questions at this point.

Mr. LEVITAS. Thank you, Mr. Solomon.

Mr. Mineta.

Mr. MINETA. Thank you very much, Mr. Chairman. Let me just ask, Mr. Antonelli, in terms of just general procedures, are there regulations as to who signs documents on behalf of GSA that has any contractual binding authority?

Mr. ANTONELLI. The basic control is the delegation of authority. Of course, a person cannot exceed their contracting authority. That is the basic control governing who can sign a lease.

Mr. MINETA. Is there a regular manual that outlines this?

Mr. ANTONELLI. Yes; there are operating guidelines that show for different grade levels what the leasing authority is.

Mr. MINETA. Is it basically a regional responsibility for negotiating leases?

Mr. ANTONELLI. That has really shifted over the years. During the Sampson and Kunzig period initially, the large leases would come through the central office and they would be reviewed before the award by the Administrator and Commissioner and assistant commissioners. Then sometime during the early 1970s it reverted back to the regions and they were given authority up to prospectus limits to sign their own leases.

Mr. MINETA. That limit under the prospectus was what?

Mr. ANTONELLI. $500,000 net annual.

Mr. MINETA. Annual lease?

Mr. ANTONELLI. Yes, sir.

Mr. MINETA. Does that include tenants' improvements and betterments?

Mr. ANTONELLI. Yes, it does, if it is part of the rent.

Mr. MINETA. And if it was a net rent lease, what happens then? Where does the $500,000 figure fit in?

Mr. ANTONELLI. The $500,000 is a net rent. That is minus utilities.

Mr. MINETA. And that was generally left to be negotiated at the regional level?

Mr. ANTONELLI. Yes, sir.

Mr. MINETA. Anything above that was at central office?

Mr. ANTONELLI. I was trying to explain, there has been a history of changes in this policy and probably as a result of the scandal in GSA additional controls were then put into effect and now many significant size leases go through the central office and are checked at different levels before the award, so today there are, you know, a far greater number of controls than there were in the mid-1970s.

Mr. MINETA. What kinds of controls would those be?

Mr. ANTONELLI. The more significant size leases, the entire lease package, which would include the record of negotiations, the lease documents, appraisal information, a package of information is sent to the central office and it is reviewed by clearance groups and they go over it very thoroughly, so there is now that safeguard built into the procedures for significant size leases.

There is also a warrant program. Persons do not get contracting authority simply because they have been in the Federal Government a certain number of years and been in the leasing program for a certain period of time. They only get these warrants when they have the right training background and have demonstrated proficiency in leasing.

Mr. MINETA. In this instance was there any reason why the negotiating of this lease was pulled back from the regional office to central?

Mr. ANTONELLI. I really do not know. I do not think it was necessary. I think that the people that were in the region had the experience and the capability to negotiate a lease like Waterside Mall. They had negotiated big leases before, and it is not clear to me why it had to go over to the central office to be negotiated.

Mr. MINETA. Was that ever pursued as to what prompted this being yanked from the regional office into central?

Mr. ANTONELLI. I never got a clear answer on that.

Mr. MINETA. Are there any suspicions as to why?

Mr. ANTONELLI. Well, I would just be speculating. I did find it odd that Mr. Shipp headed up the negotiations. I say that knowing that there was probably nobody in GSA that had more leasing experience than Mr. Shipp, but I believe that the people in the region, Doris Frankenfield and Mr. Bagley had the experience in negotiating leases of that significance and they could have done it.

Mr. MINETA. Mr. Chairman, I have no further questions right now.

Mr. LEVITAS. Thank you. Thank you very much, Mr. Mineta.

Mr. Antonelli, in your position as chief leasing branch of GSA's Inspector General, do you have any view at the present time whether procedures are presently in effect which would avoid this type of situation recurring in the future?

Mr. ANTONELLI. Well, I like to think that a strong inspections program is a deterrent against these kinds of things happening. People in the leasing program know that we know how leases should be written, how leases should be processed. So I like to think that we provide a strong safeguard against that kind of thing happening again.

The pre-award reviews, that is a control, too. I honestly think that that can go too far. There is an awful lot of oversight in GSA right now, and a lot of it is in the leasing area before the award. I have some concerns about putting all the oversight before the award. I think it impacts on the timeliness of acquiring lease space. Agencies need space on a timely basis and GSA has not been providing it, and I think one of the reasons is there is just too darn much oversight before the award.

Mr. **Mineta**. Mr. Chairman, I was wondering, where something gets taken out of the normal negotiations process, is that done orally or is that done by directive signed by somebody?

Mr. **Antonelli**. I am not sure I understand.

Mr. **Mineta**. Let's say that the normal negotiations process is that the regional office would be handling it and then someone says no, we are not going to have region 5 do it, we are going to have central do it. Is that done in writing?

Mr. **Antonelli**. Well, it happens very rarely.

Mr. **Mineta**. When something is taken out of the normal maze, is there any documentation as to why that ever happens, not this case specifically, but in other normal cases?

Mr. **Antonelli**. Today there definitely would be. Back then, the documentation was pretty scant.

Mr. **Mineta**. When was that changed to require that kind of documentation when something is taken out of the normal maze?

Mr. **Antonelli**. I really cannot give you an answer to that.

Mr. **Mineta**. Can you site the provisions in the operational manuals and procedures as to where that is required, or is that something that you think exists or does it in fact exist?

Mr. **Antonelli**. Where the negotiations are really taken out of the——

Mr. **Mineta**. And requires written——

Mr. **Antonelli**. Even though the lease would be signed back in the region, the negotiations would be outside the region—I am not certain there is such a procedure. I could be wrong.

Mr. **Mineta**. Thank you, Mr. Chairman.

Mr. **Levitas**. Thank you, Mr. Mineta. Do counsel, Ms. Downey, Mr. Nolen, have any questions?

Mr. Mitchell, you are with the General Accounting Office and have been responsible for the GAO's reports on this matter. Do you have anything to add as far as the testimony of this panel is concerned?

Mr. **Mitchell**. No, sir, I do not.

Mr. **Levitas**. Mr. Trietsch, you are with the GSA's Office in a similar position. Do you have anyting to add or comments you would like to make?

Mr. **Trietsch**. Just perhaps to briefly elaborate on what Mr. Antonelli mentioned earlier. With respect to a question that Mr. Solomon had asked and with respect to a question that Mr. Mineta had asked.

First of all, the PBS Task Force that was formed back in 1978 and was later to become the nucleus for the Office of Inspections, which was to become part of the Office of Inspector General in 1979, it must be understood that those reports prepared by the task force, such as the two reports that Mr. Antonelli has mentioned, were reports that were prepared as preliminary findings, in effect assessments or evaluations. They were not considered investigative reports. They were in fact on a case-by-case basis as Mr. Antonelli mentioned referred to the Office of Investigations, which was also later to become part of the Office of Inspector General

With regard to a question that Mr. Mineta had asked, I believe that those representatives who are here from the Public Buildings Service that will testify will be able to elaborate further on whether or not there are any procedures with respect to transferring, either the adminstration or the negotiation of a lease into central office. My understanding is that today that does not occur, but again, they may want to elaborate on that.

I think the clear point that needs to be made is, this particular lease, the 1971 Waterside Mall lease, and its processing in the central office, was an exception. Now, there were other leases at that time in history that were handled in the central office. I think that there had been a great deal of speculation as to why that happened. The belief had been persistent that the reason for that was that those people running GSA at the time believed that the central office could best administer or negotiate those kinds of leases, that is, the large leases.

I think the way the policy is today in the Public Buildings Service that belief is not there any longer. And again, the Public Buildings Service officials probably will elaborate on that for you.

Mr. LEVITAS. Thank you. I want to thank the three witnesses at the table for your testimony and for the very hard, long effort you have made in connection with this matter. I think you have done a good job. One of the things that I place a lot of hope in as far as eliminating waste and fraud and abuse in Government, and mismangement, improving our ability as a Government to operate, is the work of the inspectors general, and that work cannot be done without not only the independence under the law of the office, but dedicated, honest individuals who pursue what their judgment tells them to pursue, and I think you have done that. I hope that as a cumulative result of all of our efforts we will get to the bottom of this matter, but I think it is only fair to say that you have done your part of it and you have done a good job.

I want to thank you for your participation. Thank you.

The next panel of witnesses will be Mr. Larry Roush, Mr. Douglas Harvell, and Mr. Loy Shipp, and I know that Mr. Roush and Mr. Harvell have previously testified and are still under oath.

Mr. Shipp, if you will come forward as well.

[Witness sworn.]

TESTIMONY OF LOY SHIPP, FORMER CHIEF NEGOTIATOR FOR THE GSA; DOUGLAS HARVELL, REGIONAL ADMINISTRATOR, REGION 6, KANSAS CITY, MO.; AND LARRY ROUSH, FORMER COMMISSIONER, PUBLIC BUILDINGS SERVICE, GSA

Mr. LEVITAS. First of all, Mr. Shipp, welcome. It is good to see you again. When I first came to Congress and served as a member of the Public Buildings and Grounds Subcommittee, I remember well your appearances before our committee at that time, and I think it is fair to say—I am sure Mr. Mineta, who also came at the same time and worked closely with you would agree—that you have a reputation of being one of the most knowledgeable, able people at GSA at that time, and have a very fine reputation of being a good negotiator on behalf of GSA.

I have even seen some lease renewals which we have acted on in recent months which you negotiated a number of years ago, the original documents, that have proved very beneficial to the Government.

Mr. SHIPP. Thank you, sir.

Mr. LEVITAS. I want to welcome you here today. You have, Mr. Shipp, been identified as the person who was primarily responsible for handling the negotiations with respect to providing space for the newly created Environmental Protection Agency back in 1971, and I wonder if you would, to the best of your recollection, give the subcommittee a chronology, a rundown of when you first got involved, what your directions were, who they came from, what you did, from the early part of 1971.

Mr. SHIPP. Mr. Chairman, my first involvement with negotiating this particular lease began when Mr. Kunzig asked me to supervise and participate in the negotiations for the acquisition of about 400,000 square feet of space for EPA, specifically at Waterside Mall. Consistent with that request, I went to the Office of Operating Programs, contacted Mr. Bagley and Mrs. Frankenfield and proceeded to develop the negotiations with them and with Mr. Bresler and his attorney, Mr. Richey.

Mr. LEVITAS. Let me stop you right there. What was your position at the time Mr. Kunzig made that request of you?

Mr. SHIPP. At that time I was the Assistant Commissioner for Space Management.

Mr. LEVITAS. In the national office?

Mr. SHIPP. Yes, sir.

Mr. LEVITAS. Was there a national capital region or a region 3 or whatever it was designated at that time?

Mr. SHIPP. There was a GSA region 3, but the organization was different than the other regional offices in that the Office of Operating Programs, which consisted of certain elements of what would ordinarily be region 3, were relocated and put in a position on the staff of the Commissioner in the central office, so in effect as Assistant Commissioner for Space Management, I was on the same level and the same administrative relationship to the Commissioner as the Assistant Commissioner for Operating Programs.

We were both central office activities, but the difference was that the Office of Operating Programs had a regional responsibility, even though it was the central office function.

Mr. LEVITAS. About when did this occur, your instructions, approximately?

Mr. SHIPP. Well, it was sometime early in January, I believe.

Mr. LEVITAS. Of 1971?

Mr. SHIPP. 1971.

Mr. LEVITAS. All right. You testified just now that Mr. Kunzig asked you to procure approximately 400,000 square feet for the Environmental Protection Agency specifically at Waterside Mall. Now, was it unusual to have a specific location designated to you or how did that come about?

Mr. SHIPP. Well, this came about primarily because the solicitation for offers had been issued and the Waterside Mall people had responded and they were the only ones with space who could meet the requirement at the time and they were the ones there to negotiate with. The question was, we have identified the location, these are the folks that you are to negotiate with and you are to go down and assist and supervise the Office of Operating Programs people in acquisition of the space that is needed.

Mr. LEVITAS. Presumably, then, things had occurred, events had transpired prior to your involvement which had identified Waterside Mall and Mr. Bresler as the person with whom you were to negotiate. Do you know or did you ever ascertain what led up to that? At some point in time, somebody said, there is a new agency called the Environmental Protection Agency, GSA needs to get space for them. Where in the chronology of events did that occur?

Mr. SHIPP. Well, that undoubtedly occurred at the time the Environmental Protection Agency made a request to GSA for the acquisition of space in which to consolidate their headquarters' activities. I did not look into the background as to when these requests may have been submitted or the justification for the 400,000 square feet, plus or minus about 10 percent. I accepted the fact that the Office of Operating Programs had done its job, had developed the solicitation and the offer up to that point.

It was now my job to go in and wrap it up by concluding the negotiations, getting an acceptable offer and getting into a position so that the contracting officer, whoever he might be in the Office of Operating Programs could accept the offer and we would have a binding contract.

Mr. LEVITAS. The Office of Operating Programs had done the work as far as identifying the proposed lessor with whom you were to negotiate. Did you ever have occasion to review the public solicitations for space to which the potential lessor responded?

Mr. SHIPP. I did not review the solicitation for offers. That was put together, again, by the Office of Operating Programs and when I arrived on the scene the solicitation had been issued and it was ready for negotiation.

Mr. LEVITAS. Have you had an opportunity to review the GAO report?

Mr. SHIPP. No, sir, I have not seen it.

Mr. LEVITAS. The chronology that they identify or they spell out is that EPA officially requested 400,000 square feet of space in the Washington, D.C. area from GSA on January 5, 1971. And then there were solicitations made which had resulted in identifying, apparently, Town Center Management Corp. as a potential bidder. And then there was another bid, from the L'Enfant Plaza West, Inc., according to the GAO report, but they were not contacted by GSA until 14 days prior to the deadline for offering space to GSA on the solicitation.

Are you familiar with that?

Mr. SHIPP. No, sir, I am not.

Mr. LEVITAS. Did you ever have dealings with a General Quesada of the L'Enfant Plaza West?

Mr. SHIPP. Yes, sir, I have. For a while we were issuing solicitations or at least I knew the regional office was issuing solicitations, and General Quesada would respond to these solicitations and there were a number of discussions with him at various times about his offering.

Generally speaking, we wanted to acquire space that was completely ready for occupancy, a situation where the lessor would take our partition plans and install all the partitions, the ceilings, lights, floor covering, et cetera, and deliver the space complete and ready for occupancy to GSA for assignment to the agency.

Some of the proposals I recall from General Quesada involved in effect a sort of net lease, where he would lease to us the shell of the building and then GSA would have to take money and install the ceilings, install the lights, install the floor covering and partitions. So it was a method of funding the improvements that he was basically after, and that was inconsistent with the way we wanted to acquire the space.

Mr. LEVITAS. But in connection with this particular matter, you had no dealings with General Quesada?

Mr. SHIPP. I do not recall that I ever discussed this specific acquisition with him. I discussed his buildings with him a number of times, but I just do not recall ever discussing this specific acquisition with him.

Mr. LEVITAS. The chronology developed by GAO and others indicates that in January of 1971 GSA issued a solicitation for Offer No. 55 seeking bids for 400,000 square feet of lease space in Southwest Washington. That was the lease that you ended up negotiating, the responses to that solicitation, is that correct?

Mr. SHIPP. I believe that is correct. Yes; that is correct, Mr. Chairman. It is No. 55 dated January 19, 1971.

Mr. LEVITAS. Again, according to the chronology that I have, and if you, Mr. Harvell, Mr. Roush, Mr. Mitchell, or Mr. Trietsch have any information to the contrary, please correct me, because I am trying to get this thing squared away—that in response to that solicitation offer on January 1, 1971, there were two offers received, one from Bresler Reiner Cos., Town Center Management, the other from the L'Enfant Plaza West, Inc., and then it appeared that Town Center was the low bidder.

There were some negotiations with Town Center and they appeared to be the low bidder based upon those solicitations. And on February 12, Town Center amended its offer. The new offer was to provide space in an amount 32 percent greater than the original space requested by EPA, that the solicitation was not amended, nor were the L'Enfant Plaza officials notified that it could offer additional space.

The next event occurred on February 19, in which the Administrator of GSA approved the Space Management Division's recommendation that GSA accept Town Center's amended offer, including 60,000 additional square feet of space. It was on that date that Town Center was notified of the decision to accept the January 27 offer as amended February 12, 1971.

Does that correspond to your recollection of the chronology?

Mr. SHIPP. Well, my recollection is that we acquired approxmately 420,000 square feet out of the original negotiation, but I have not totaled up all the figures that came in the various offers.

Mr. LEVITAS. My next questions to you, Mr. Shipp, will relate to your negotiations with Town Center Management in connection with the final lease that was entered into, but before I do that, in order again to put it in perspective against a background, Mr. Mitchell, I wonder if you could provide a summary of the chronology that GAO ascertained as far as leading up to the point where Mr. Shipp came into the negotiations.

Mr. MITCHELL. Yes, sir. Mr. Chairman, we did not really get deeply into the negotiations, but we did lay down the chronology that led up to the actual award. EPA requested 400,000 square feet on January 5, 1971. GSA solicited offers on January 19, 1971, and two firms were solicited—Town Center and L'Enfant Plaza West, Inc.

For the Plaza West offer, we had to meet with them to really find out what went on because GSA had destroyed its records of negotiations with Plaza West, Inc. Town Center offered 420,000 square feet. L'Enfant Plaza West offered 383,000-plus square feet.

During negotiations, Town Center raised its offer from 420,000 square feet to 466,000 square feet with an option to lease 60,000 additional square feet. The total came out to somewhere around 526,000 square feet in all, which was about 32 percent higher than the 400,000 square feet that went out on the original solicitation. Regarding the L'Enfant Plaza offer, we met with General Quesada, because we could find no GSA records. He told us that he had one negotiation session with GSA, which GSA had no records of. I am not sure who he negotiated with in GSA, but it was done early in February.

He gave GSA a bid of $7.06 per square foot. That was to include all services and utilities. Town Center had bid somewhere around $5.75 a square foot. Town Center lowered its offer, but General Quesada told us that he would not lower his $7.06-per-square-foot offer. He told us also that he was not aware that Town Center was giving an offer on more space than the 400,000 square feet that had originally been solicited.

At one time we were going to criticize GSA because the two offerors were not treated equally in this situation. However, General Quesada told us that, even had he known that more space would have been acceptable, he would not have changed his $7.06-per-square-foot basis. Therefore, in the end analysis, Town Center was almost $2 a square foot less in its offer for space than L'Enfant West, Inc.

Mr. LEVITAS. Mr. Solomon asked a question of me just as you were testifying that I will take the liberty of asking you. Why would GSA not have maintained the records of its negotiations with the L'Enfant Plaza as a bidder on this? Surely there must be some requirement to maintain records of solicitations in order to prove that they were handled the way they are supposed to be. In this instance, you had to go to someone many years later, and there was no documentation in the records that anything had occurred, and, presumably, if General Quesada had died or moved away, there would not have been any evidence of it.

Mr. SOLOMON. And you used the word "destroyed."

Mr. MITCHELL. We asked that question, and, remember, we were in there about 6 years after this happened. We were told that at the time they had a 1-year retention on the records that we were looking for, which in this case was the unsuccessful offeror's bid. I do not really know what regulation covered that, but the 1-year rule is what they told us is the reason that they destroyed that particular record. General Quesada did not provide us records either. He looked through a calendar of his own appointments. That is how he was able to come up with that he had had negotiations on February 3, 1971. He mentioned that there may have been phone calls other than that, but he was not familiar with what calls. I cannot really answer why GSA destroyed its records. We were told at the time that there was a 1-year retention rule.

Mr. LEVITAS. Thank you, Mr. Mitchell.

Mr. Shipp, do you want to pick up at that point?

Mr. SHIPP. Yes, sir. After I was instructed to supervise and participate in the negotiations, I then arranged a meeting with Mr. Bresler and his attorney, Mr. Richey, and we talked about the requirement. One of the things that I emphasized was the fact that a cafeteria would be required. It was called for in the solicitation. It was the responsibility of the lessor to provide it in accordance with the provisions in that solicitation. And it was clear in my mind, and I think it was clear in his, also, because he laid out a set of blue lineprints and talked about the cafeteria and various other fast-food type things that he was working on or contemplating might go into the space. And as a result of these meetings and conversations, we developed two offers, and after the second offer was received, we looked at it very carefully and made a determination that it was acceptable.

There had been considerable discussion about the amount of money that would be deducted from his $5.50 offer fully serviced for the Government providing utilities. Mr. Bresler wanted to deduct 25 cents. We wanted to deduct more than that. But in the final analysis, he was only willing to submit a proposal that involved a rental without utilities. We had that at hand. It did not appear that further negotiations would be successful unless they were rather prolonged, and a determination was made that we should write the letter of February 19, which, as you will note, attempted to put into it the option again to lease the whole facility at $5.50, which Mr. Bresler indicated he would not agree to. And following that, why it was decided that we would prepare that offer for acceptance.

Now, on the way to that, I had been negotiating with Mr. Bagley and Mrs. Frankenfield. I had been the principal negotiator, and I had been rather aggressive with Mr. Richey and Mr. Bresler about getting a price reduction, and I did get some price reductions from what they originally came in at. They were originally talking $6, and we talked them down from that. Again the issue of how much would be deducted for utilities came up, and Mr. Richey apparently called to Mr. Kunzig and indicated that I was being a little aggressive about this matter, and he did not like my tactics particularly, and that I possibly was changing position on him from time to time. So Mr. Kunzig sought me out. I happened to be at lunch in the cafeteria and he called me and asked me what the status was of this thing. Mr. Kunzig was the type of man who wanted things done right now, he wanted them done right, and he wanted GSA to perform, because agencies were criticizing GSA from the standpoint that they would ask us for space and it took us forever to get it for them. His answer was, I want the people in GSA to perform and get space and deliver to the agencies on a timely basis.

I explained to him briefly that possibly Mr. Richey was referring to the fact that I was arguing with them about the amount of money to be deducted for utilities, and again Mr. Kunzig encouraged me to get on with it and get the job done, and I told him I would take care of it. So I went back and we concluded the negotiations. I looked at the price of $5.25 with the Government providing the utilities, and drawing on my own experience from the standpoint that once we provide the utilities there are other benefits that flow to the Government other than just strictly numbers—from the standpoint that when we are providing utilities, we have almost total flexibility on how we utilize the building in terms of the hours of operation and also from the standpoint of the amount and kinds of equipment that can be placed in the building without having to increase the rent to the lessor.

I look at this building from the standpoint that this, in effect, was another Federal building, because no one expected EPA to go out of business in 3 years, 5 years, or 10 years. While we did not obtain a complete tradeoff for the 50 cents, what we were estimating utilities at that time, we did get the advantage of having almost complete control of the facility, so that if we decided that we had to put in more computers or we were going to heavy-up other kinds of electrical machinery or duplicating plants and so forth, every time we did that we did not have to negotiate a new rental rate with the lessor for the increased services or increased utilities that would be required by those things. So we had a savings of personnel time, a greater flexibility in the utilization of the building, and overall I felt that further negotiations, unless they were somewhat protracted, would not produce any better offer. Consequently I was willing to accept the $5.25 rate. And at that time, I felt that was a good competitive rate in the market.

Mr. **Levitas**. How long would you say these negotiations went on before it was finally accepted?

Mr. **Shipp**. Well, each time we met, the discussions would last anywhere from 1 to 2, 2½ hours, and we met on two separate occasions where we examined blueprints and discussed offers, and then at the very end, once we had the February 19, 1971 counteroffer in effect, there was some further discussion at that time when Mr. Bresler came in to sign his acceptance of the additional terms that had been placed into the letter. And at that time, once that letter was signed by Mr. Harvell, I no longer was associated with the case.

It has been alleged that Mr. Kunzig removed me from the case. He did not. He gave me a charter. That charter was to negotiate a lease. I obtained an acceptable offer. The Government entered into a contract, and, at that point, I was through with the case and it was turned back to the Office of Operating Programs for them to proceed to administer that lease.

Mr. **Levitas**. Now, Mr. Harvell, what was your position at GSA at the time Mr. Shipp concluded his negotiations?

Mr. **Harvell**. I had just arrived in Washington from Atlanta region 4 as the Deputy Assistant Commissioner for Operating Programs. I arrived—I believe it was early January of that year.

Mr. **Levitas**. And you stayed in that position for how long?

Mr. **Harvell**. I was the Deputy under Mr. Roush and Mr. Zechman, and I became the Assistant Commissioner in late 1973.

Mr. **Levitas**. Now, Mr. Roush, you arrived on the scene approximately the same time, did you not?

Mr. **Roush**. Yes, sir. The Office was being established—I am not sure exactly which week or which day, but in the very later part of 1970, and that is the only thing I might add to what Mr. Shipp was saying. Some of the paperwork may have been prepared while the leasing operation was still part of region 3, before the Office of Operating Programs was officially established. I am not quite sure. That is a very hazy area. My recollection is not good on that.

Mr. **Levitas**. All right. Now, for a reason that will be apparent in just a moment, I want to move forward for 1 year to 1972, when the question arose about where is the cafeteria, and Arthur Barton, the GSA contracting officer, tried to get the lessor to provide the cafeteria and was not getting results. He then made the recommendation that there should be a withholding of rent. Subsequent to that recommendation there was a meeting, at which Mr. Bresler participated. I think Mr. Harvell, you were at that meeting.

Mr. **Harvell**. No, sir, I was not at that meeting.

Mr. **Levitas**. Mr. Roush.

Mr. **Roush**. Yes, sir.

Mr. **Levitas**. And that was the meeting at which Mr. Bresler first said, "I do not have to build a cafeteria; there is no responsibility to build a cafeteria;" is that correct?

Mr. **Roush**. I believe that is correct, sir.

Mr. **Levitas**. Had you ever heard that before?

Mr. **Roush**. No. Coming to the meeting I was warned by Mr. Adamec saying there is real trouble or that was the reason for the meeting; I don't know.

Mr. **Levitas**. So as far as you are aware it was at that meeting Mr. Bresler said "I do not have to build a cafeteria"?

Mr. **Roush**. Yes, sir.

Mr. **Solomon**. Mr. Chairman, could I ask a question?

You mentioned the phrase "real trouble." What kind of trouble are you referring to?

Mr. **Roush**. That there was some dispute.

Mr. **Solomon**. Anything further than that?

Mr. **Roush**. Not in particular; no, sir.

Mr. **Solomon**. What was the nature of the dispute?

Mr. **Roush**. That there was a problem with versions of the lease. This was a long and hotly disputed lease.

Mr. **Levitas**. Mr. Shipp, you negotiated that lease and sat down face to face with Mr. Bresler and/or his attorney, Mr. Richey. Was there ever anything said to you during the course of your negotiations which led to the signing of the lease, that there would or would not be a cafeteria provided by the lessor?

Mr. **Shipp**. Mr. Bresler understood; Mr. Richey understood, too, I think. I thought at the time that they had a responsibility to put in the cafeteria in accordance with a certain paragraph in the solicitation for offers, and they brought out the blueprints and we discussed the fact that it was going to go into the building. I think it was supposed to go on the second level of the building. We did not lease that. We leased the third off. There was a lot of discussions where this cafeteria could go. When we concluded the negotiations and made the award, I was certain in my own mind that they recognized their responsibility and I was certain that the Government had no responsibility for paying any part of the cost of that facility.

Mr. LEVITAS. A little over a year later, Mr. Bresler for the first time formally presents what he called his version of the lease, which is totally contrary to anything you recall at that time you negotiated that lease?

Mr. SHIPP. It was contrary to what we discussed at the negotiation and contrary to his offer.

Mr. LEVITAS. Well, somebody is not telling the truth.

Mr. SOLOMON. Would you yield on that point?

Mr. LEVITAS. Yes.

Mr. SOLOMON. Mr. Shipp, considering the market values at that time, in your educated opinion, regardless of what the misunderstanding might have been, do you feel that the factor of the cafeteria cost was unreasonably considered in the amount of rent that was agreed to at that time? In other words, do you feel that there was enough built in for Mr. Bresler to provide that service, considering market values at that time?

Mr. SHIPP. Yes, sir. I feel that is was a fair arrangement between Mr. Bresler and the Government and he had enough to put in the cafeteria facility.

Mr. SOLOMON. Good.

Thank you, Mr. Chairman.

Mr. LEVITAS. Thank you, Mr. Solomon.

One other question, Mr. Shipp. You were very knowledgeable about the space availability situation in the Nation's Capital at that time?

Mr. SHIPP. Yes, sir.

Mr. LEVITAS. Was this Waterside Mall under construction when you got involved in the negotiations?

Mr. SHIPP. Yes, sir. It was under construction, and, in fact, I went down and looked at the site so I would know what I was talking about to some extent. If I remember correctly, the west tower and the central plaza, the connecting link, in effect, were both under construction at the time. I quess you could say the whole thing was under construction, because it had an associated foundation that was support for everything there, so it definitely was under construction at the time and well underway.

Mr. LEVITAS. Do you know whether or not the construction of the Waterside Mall, which was then in progress, had commenced prior to the solicitation for space for EPA?

Mr. SHIPP. Yes, sir. It would have had to be as far along as it was. There were months of construction evident there.

Mr. LEVITAS. What was the space situation in Washington at that time? Was it as tight as it is today?

Mr. SHIPP. Well, I am not familiar with exactly how it is today. I understand we are paying some pretty high rents now, $18 to $20 a square foot in this town, but at that time I believe it was one of those periods of time when space was rather tight in the city, and there were no great big blocks of space, or a very limited number of them. In fact, apparently we only turned up two major buildings with significant blocks of space, and that was L'Enfant Plaza and Waterside Mall. So, while there may have been a lot of space out there from the standpoint of 10,000, 15,000, 20,000 feet, or even 100,000 square feet, there was only a very limited amount of space in the range that we needed it in to effect a proper consolidation of EPA headquarters.

Mr. Levitas. Who would have been in a position at that time to provide the subcommittee information about the availability of space generally in the Washington area, whether there were or were not other potential blocks of space available?

Mr. Shipp. In 1970, 1971, I am sure the later part of 1970, it would have been the Director of the Space Management Division in region 3, and then later in 1971, early 1971, it would have been the Director of Space Management Division in the Office of Operating Programs.

Mr. Levitas. I have some other questions, but at this time I would like to recognize Mr. Solomon and then Mr. Mineta.

Mr. Solomon. Mr. Chairman, I do not really have any further questions. Somewhere in this file here it says that Mr. Shipp is a very sharp negotiator and is very qualified. From his testimony here today, I believe that. You have answered a lot of specific questions, and I commend you for it.

I will pass at this time, Mr. Chairman.

Mr. Shipp. Thank you.

Mr. Mineta. Mr. Shipp, solicitation No. 40, there has been reference to it. Do we have a copy of that?

Mr. Shipp. I am not knowledgeable about 40, and I do not have a copy of it myself.

Mr. Mineta. Is there a copy of it anywhere, Mr. Roush, Mr. Harvell?

Mr. Roush. I am unaware of it if there is, sir.

Mr. Harvell. I am not familiar with that at all.

Mr. Mineta. Not familiar with the existence of it?

Mr. Harvell. I am not familiar with whether there was one or not.

Mr. Mineta. How do we get to the point of soliciting for space, how do we get to that point in the first place? Where does that thing begin?

Mr. Shipp. I am going to volunteer to answer the question. The first thing that happens is that an agency must develop a requirement for space in conjunction with a plan to consolidate activities, in conjunction with an expansion that may have been authorized by the Congress or for various reasons, and once they have determined that they have a need for additional space or for new space, they will submit a standard form 81, SF-81, which is a request for space, to the appropriate GSA regional office, and once GSA gets the SF-81, then it is their responsibility to analyze it, the SF-81, make sure that the request has followed the standards from the standpoint of space allowances or occupancy guides, if there is an occupancy guide for this particular activity, and there is a particular unit in the Space Management Division that certifies to the leasing activity the acquisition of a certain amount of space for an agency.

Mr. Mineta. That is space management and not program operations?

Mr. Shipp. It is an operating program in the region. In other words, in the region where you have a Public Buildings Service, you have various divisions in it.

Mr. Mineta. You also have space planning?

Mr. Shipp. The space management division at the regional level would be the division that would be responsible for taking these requests, analyzing them, and then performing the acquisition function.

Mr. Mineta. What about space planning? What is the difference between space planning and space management?

Mr. Shipp. Space planning has to do primarily with developing requirements for Federal buildings, new Federal buildings, and developing requirements for lease consolidation, or a combination of the two, or there is one other thing you could develop, and that is a requirement to rehabilitate or modernize an existing building.

Mr. Mineta. Space planning would only be central, then.

Mr. Shipp. There was planning activity in the regional offices that was a separate division of the Public Buildings Service, so you have in the Public Buildings Service, typically, you could find a construction division, a space management division, a planning division. Those three work together, coordinate, short- and long-range planning.

Mr. Mineta. So you had a mirror at the regional as you do in central?

Mr. Shipp. At that time, yes, sir.

Mr. Mineta. The normal request, as in this instance from EPA on the SF No. 81, would go to the regional office?

Mr. Shipp. That is correct.

Mr. Mineta. And the regional office would then go out and look for space based on the requirements that have been submitted by the agency?

Mr. Shipp. Yes, sir, they would develop the requirements, interpret these requirements in the form of a solicitation for offers.

Mr. Mineta. Was that done in this instance?

Mr. Shipp. Yes, sir. As far as I know, that was the way it was done.

Mr. Mineta. In what form was this done in this instance?

Mr. Shipp. I am not aware of how it was actually handled in the regional office.

Mr. Mineta. Was not that mechanic in this instance SFO No. 40?

Mr. Shipp. No. We are talking about No. 55. SFO No. 40 would be another solicitation for offer that was developed based on some requirements that were developed at a previous time.

Mr. Mineta. So, SFO No. 40 is a general space solicitation for offer, whereas No. 55 is specifically for EPA?

Mr. Shipp. I know SFO No. 55 was specifically for EPA. SFO No. 40 is probably for a specific agency, also.

Mr. Mineta. But no one knows where SFO No. 40 is?

Mr. Shipp. If SFO No. 40 was issued and an award was made, the lease file for that particular award would include the SFO.

Mr. Mineta. But there is no SFO No. 40. Everyone refers to it, but there is no copy of it around.

Mr. TRIETSCH. In the Board of Contract Appeals decision—and, by the way, I might first of all say I have not been able to see a copy of solicitation No. 40—it is unclear whether one copy currently exists, but there is reference made to SFO No. 40 in the Board of Contract Appeals decision with respect to the Waterside Mall cafeteria.

Apparently what happened was that in the late 1970's the Government issued solicitation No. 40, a predecessor to solicitation No. 55. It is unclear precisely what solicitation No. 40 was for, with respect to the Board of Contract Appeals decision, but it apparently was for space for the EPA headquarters, and the appellant in the case, the lessor, Mr. Bresler, responded on September 29, 1970, to solicitation No. 40. Now this, again, was a predecessor to solicitation No. 55.

Mr. MINETA. In that response, he is offering the Waterside Mall complex in response to that SFO?

Mr. TRIETSCH. Apparently he was. The Board of Contract Appeals opinion makes reference to the fact he was unsuccessful in leasing this space. That is the Waterside Mall space which was under construction at that time, late 1970—since it again offered the space to the Government in a letter dated November 16, 1970. That is Mr. Bresler on behalf of Town Center Management.

The letter stated, "We have previously supplied plans, rental brochures, and other material" and then by a letter dated December 29, and the date I believe in the Board of Contract Appeals decision is inaccurate—it should read 1970 rather than 1976—Mr. Bresler, on behalf of the Town Center Management, furnished additional information to the Government, including a brochure showing a completed project. That is for the Waterside Mall compound.

Mr. MINETA. Do we know whether or not Town Center Management Corp. has a copy of this SFO No. 40 that they responded to?

Mr. TRIETSCH. It is unclear whether they do or not. The confusion, I think, is that somehow, between November 1970 and February of 1971, a new solicitation, solicitation No. 55, was issued by the Government. Now perhaps it was because solicitation No. 40 did not contain all of the requirements that the Government thought it should contain.

The record is simply unclear on that, but I think that is precisely where some of the confusion stems from, and the speculation, of course, with respect to the cafeteria provision is that Mr. Bresler, who indeed did receive a copy of this solicitation No. 40, early on, which never developed to fruition, apparently had that copy as well as a later solicitation No. 55, portions of which appeared to be amalgamated with regard to page 27, and I think that is where the confusion comes in.

Mr. MINETA. What is this reference to the letter of September 29 of 1970?

Mr. TRIETSCH. Apparently what happened on that date was, Mr. Bresler, on behalf of Town Center Management, responded to solicitation No. 40, and he offered space in the Waterside complex to the Government pursuant to solicitation No. 40.

Mr. MINETA. Does he make reference in that September 29 letter to SFO No. 40?

Mr. TRIETSCH. Yes. That was the only solicitation at that time in history that had been issued with regard to Waterside Mall.

Mr. MINETA. Then GSA has no record of SFO No. 40.

Mr. TRIETSCH. The Board of Contract Appeals references it, and my understanding is that the reason they reference it is because of testimony given by Mr. Bresler and other participants, perhaps from the Public Buildings Service at that time, as opposed to actually having a hard copy of it.

Mr. MINETA. And do we have any information from GSA, itself, as to whether there existed at any time an SFO No. 40?

Mr. TRIETSCH. Not that I am aware of. I have never seen such a copy. However, that has never been disputed by either side that there was indeed a solicitation No. 40. The fact of the mater is, space was simply not leased based on solicitation No. 40. It apparently had been retracted; I am not sure what Public Buildings Service policy is on that.

Mr. MINETA. No. 55 came along when?

Mr. TRIETSCH. In 1971. It was issued on January 19, 1971. So between late 1970 and early 1971, another solicitation—and I hesitate to say new solicitation because, while it apparently dealt with the same space, Waterside Mall space, it is unclear precisely why solicitation No. 40 never developed, or was never accepted, rather, by the Government.

Mr. LEVITAS. I ask this of whoever might be able to inform me. Who would have been developing the solicitations during the period of 1970 into January 1971? Would they have been developed by region 3, Ms. Frankenfield?

Mr. SHIPP. More likely it would have been. I might make a comment regarding Mr. Mineta's question. It was the practice of GSA region 3, because we were interested in stirring up as much competition as possible, and because we had a lot of people in town who were interested in building to GSA's requirements, it was our practice if someone came in and wanted to know: What are your lease requirements—not in terms of specific amounts of space—but what are you asking us to design into a building today, what do you want, we would hand out what we call dummy solicitations.

Some of them would have all the package together; it would just be the solicitation itself, and they would not say so many thousands of square feet or anything like that, but it would give a developer, or an architect, a concept of the kind of building he had to design and deliver for the Government to be consistent with our requirements, and it could have been that Mr. Bresler, with a building under construction, would put money into the thing at a very rapid rate, and wanting to press forward with GSA in considering his space, and possibly acquiring it, could have gotten hold of one of these solicitations and said, "I will volunteer this; I will bring this thing to a head by coming in and offering the space in response to a solicitation that might have been used for some other purpose at an earlier time."

This would not have been the first time this happened, because I have seen other people get hold of a dummy solicitation, and, in order to get our attention, bring it in and say, "Here, I would like to offer in response to what you typically acquire in the market here."

Mr. **MINETA**. I am not sure what the right question is, and I think that is what all of this is searching for. I am just sort of stymied, frankly, but there is a question out there that is answerable by someone, but I just don't know what that question is.

Is there anyone who is willing to be forthcoming on this issue, to try and bring this thing to a head? I mean the statutes have run, and everything else, and I think we are trying to get at a point which is already obvious. I don't know what that right question is, and I just hope that someone will be forthcoming on this issue.

Mr. **LEVITAS**. Mr. Shipp, during that period of time, 1970 into January of 1971, the solicitations for space in Washington would have been developed by region 3?

Mr. **SHIPP**. Yes, sir.

Mr. **LEVITAS**. Mr. Trietsch indicated that solicitation No. 40 was an earlier version of a solicitation for EPA space. Is that what you suggested, Mr. Trietsch?

Mr. **TRIETSCH**. From the Board of Contract Appeals record, it appears that that is the case. I think, since Mr. Shipp elaborated on that, it is important to reiterate it, that the Government, at that time, GSA did, in fact, issue, and perhaps issue is the wrong word, provide to prospective lessors copies of solicitations which outlined what the Government's requirement would be. One of these could very well have been solicitation No. 40. I think the fact is it was not nearly as precise with respect to space as was the later and significant solicitation No. 55.

Mr. **LEVITAS**. But nobody as yet has been able to find a copy of solicitation No. 40. There has been some discussion of it at these hearings and at the Board of Contract Appeals.

Mr. **TRIETSCH**. Apparently that is the case. No one has been able to find a whole or entire copy of this solicitation No. 40.

Mr. **LEVITAS**. Let me nail one thing down so we can be clear on this, Mr. Shipp. The lease which you negotiated with Town Center Management was based upon solicitation No. 55?

Mr. **SHIPP**. That is correct.

Mr. **LEVITAS**. And we have already covered the business about the cafeteria.

Mr. **MINETA**. Let's look at solicitation No. 55. This is the offering which eventually ended up in a lease contract; is that correct, Mr. Shipp?

Mr. **SHIPP**. That is correct.

Mr. **MINETA**. As I recall, in this kind of procedure you have a form 1364?

Mr. **SHIPP**. Yes, sir.

Mr. **MINETA**. And that provides information on space that is being offered?

Mr. **SHIPP**. Yes, sir.

Mr. **MINETA**. Does a form 1364 exist for the offer made by L'Enfant Plaza West?

Mr. **SHIPP**. I do not know.

Mr. **MINETA**. Is there anyone who can answer that?

Mr. **HARVELL**. No, sir. We are trying to locate the pages here. Just a moment.

Mr. **Roush**. Mr. Chairman, to the best of my knowledge, I have no awareness there is one existing, and, in fact, I think there was earlier testimony it does not exist.

Mr. **Mitchell**. We could never find a 1364. That is a copy of the records we were told were destroyed after 1 year. The bid or the offer by L'Enfant Plaza West, the 1364, we could not find a copy of.

Mr. **Mineta**. What about a copy of the offer by L'Enfant Plaza? Have you seen that?

Mr. **Mitchell**. No, sir, we found absolutely no record of what they offered. We found a memorandum that GSA summarized what the offer contained, but this was solicitation No. 55 now, not the No. 40. General Quesada told us he did not even know GSA was looking for space until January of 1971, when GSA hand-delivered a copy of solicitation No. 55.

Mr. **Mineta**. Mr. Shipp, is it normal practice that offers are destroyed or taken out of the file, or 1364's, after a lease is consummated with someone else, that they would be destroyed?

Mr. **Shipp**. Ordinarily the procurement file would contain copies of competing offers, but I am not aware of what kind of practice the region might have followed in terms of pulling out information that they considered extraneous to the file once the award was made, or once they had completed it.

Mr. **Mineta**. In this case, since someone had been directed to take this out of the hands of the region and bring it into the central office to start negotiations on this thing, would not that file then not be in the regional office but in central?

Mr. **Shipp**. The file would not be in the central office, as such. Let me explain to you that when we talk about the Office of Operating Programs being a part of the central office, that whole unit—if you could just imagine picking it up like it was a bundle of bricks and saying, OK, you are sitting down at 7th and D Streets Southwest yesterday, and tomorrow that bundle of bricks will be sitting in the central office with the files and everything else. That is essentially what happened. The whole activity was brought to the central office.

At the time I was involved in the negotiation, I was dealing with a central office counterpart, and that whole activity, all its files, all its people, everything, were now located in the central office. That is the headquarters building at GSA, but performing a regional function, and all our files and records would have been kept right with them.

Mr. **Mineta**. Who is that counterpart you are referring to?

Mr. **Shipp**. My counterpart at the time was Mr. Roush, who was the Assistant Commissioner for Operating Programs.

Mr. **Mineta**. Mr. Roush, again going back to SFO No. 55, was there a 1364 on the L'Enfant Plaza offer?

Mr. **Roush**. I am sorry, Mr. Mineta, I can't answer that question. I don't know. I assume it was there, it has been referred to, but I don't personally know.

Mr. **Mineta**. Are you familiar with the L'Enfant offer?

Mr. **Roush**. I heard earlier testimony, and I do know, being reminded by the testimony, that General Quesada did bid around that time; that he did have a building that he was interested in leasing to the Government, but I can recall no other detail.

Mr. Mineta. Would you say there is a sweetheart arrangement here somewhere?

Mr. Roush. No, sir, I would not.

Mr. Mineta. What about time element? As I understand it, there is some indication L'Enfant only had 2 weeks to look at an amended solicitation, if that is the correct terminology. That was not sufficient time, really a relatively short period of time, under normal circumstances, for something like this to happen.

Are you familiar with that part of it?

Mr. Roush. Mr. Shipp was guiding those negotiations using people who would have normally been on my staff and as to some of the market knowledge and analysis available to those people, I don't know.

Loy, would you want to add anything to that?

Mr. Shipp. I gather what you are saying is the L'Enfant Plaza had an extremely short time in which to respond to SFO No. 55 and submit a proposal of GSA.

Is that what you are saying?

Mr. Mineta. That is the short period of time I am referring to; that is right.

Mr. Shipp. I might say it is a relatively short period of time, but most people in Washington, including General Quesada and L'Enfant Plaza, most of the people who were knowledgeable enough to have a building of this size and who have been in the business for a while, they could turn out a response to an SFO in a very short period of time. So 2 weeks would not be an unusually short period of time. It would be relatively short, but it would not be a situation that would prohibit any knowledgeable real estate developer of a project of that size from submitting a responsive offer. He might have to work at night; he might have to work over weekends and put a little extra effort into it, but in 2 weeks, he could get an offer together.

Mr. Mineta. What is normal practice?

Mr. Shipp. Well, ordinarily, I don't know what the practice is now, but when I was involved in the operation time for solicitation of offers it ranged anywhere from 10 days up to 30 days or 45 days, depending on the scope of the requirement.

Mr. Mineta. That scope being what, action by the Administrator?

Mr. Shipp. No, sir. We had certified lines. For example, if we were asking for a building of 100,000 square feet, and we knew it would have to be a lease-construction facility, for example, one that would be constructed after award of the lease, we would have to be a lot more specific in terms of the kind of building, the size of the building, the basic structure of the building, than we would have to be if we were leasing existing space, or a building already under construction and already planned.

So the more complex you became in terms of your solicitation and your requirements, you gave a little bit longer time to the various competitors.

In this particular case you had a building already planned and designed; it was under construction. L'Enfant Plaza, I think, was possibly further along than Waterside Mall. I am not certain of that, but there was no great problem as far as I could see in Mr.

Quesada submitting a responsive proposal if he really wanted to work at it.

Mr. **Mineta**. The determination of the time period of anywhere from 10 days to 45 days, I take it, is a subjective kind of judgment. You don't go to a chart and say if it is in excess of 250,000 square feet, or $500,000 a year in lease payments, it is going to be 12 days; or if it is over here, 18 days; or if it is over here, 47 days? It is a figure pulled out of the air?

Mr. **Shipp**. There is a lot of subjective judgments involved in a situation like that, but there were, I believe, at the time, in the leasing handbook, some guidelines that provided general guidance for a region to follow, but it was not binding on them in every instance that they had to allow a certain amount of time, depending on a certain quantity of space.

Lots of times, if you knew what was available and there was an urgent need for the space, you had to have the ability to make a judgment that you were going to cut down the amount of time because you had to proceed with the procurement as quickly as possible.

Mr. **Mineta**. In this instance who made the determination that it would be 14 days?

Mr. **Shipp**. This would have been the responsible people in region 3, or Office of Operating Programs.

Mr. **Mineta**. Again, I will ask the question: Who was that person?

Mr. **Shipp**. In that particular case it probably was the Chief of the Leasing Branch, in which case I believe it was Mr. Bagley.

Mr. **Mineta**. At the regional level?

Mr. **Shipp**. Yes, sir.

Mr. **Mineta**. Mr. Roush, you were in operating programs at that time in central. Did you make that determination?

Mr. **Roush**. No, sir, I did not. I would tend to agree, although it is pure speculation, that Mr. Bagley would have been the one to make the decision.

Mr. **Mineta**. And Mr. Bagley was at the regional office?

Mr. **Roush**. Yes, sir.

Mr. **Mineta**. In leasing?

Mr. **Harvell**. Yes.

Mr. **Mineta**. Mr. Chairman, I have no further questions right now.

Mr. **Levitas**. Let me ask you this, if I may: The certificate of award which we located in GSA files indicated there was no advertisement for offers. Therefore I take it, Mr. Shipp, that this was really a negotiated rather than a competitively bid lease that was finally entered into.

Mr. **Shipp**. The policy and the procedure for GSA to acquire space is a competitive negotiation procurement and, as such, is not a formally advertised procurement such as you would get if you were buying nuts and bolts or something like that.

This is a negotiated procurement but it is done on a competitive basis to the extent that competition is available.

Obviously the larger block of space you need, the less competition there is going to be because, if you ask for 10,000 square feet of space, you can get it many, many places.

If you ask for a couple hundred thousand or a half a million, you have another problem.

Mr. LEVITAS. The reason I raise the point is when SFO 55 was being developed it was sent by GSA to the Environmental Protection Agency for their comments on the solicitation, and in a letter dated December 23, 1970, from a Mr. Arthur H. Nies at EPA to a Mr. Patrick R. Thomas at GSA regional office, the first comment that Mr. Nies makes on SFO 55 is as follows:

"The southwest area of Washington, D.C. referred to on the first page is not a firm requirement of EPA. However, a downtown D.C. location within a reasonable radius of the Executive Offices is required."

Now, do you recall whether the southwest area of Washington was identified in the final SFO? SFO 55?

Mr. SHIPP. No, I don't. If you would bear with me just a moment, it may mention it at the very beginning of the SFO.

Mr. LEVITAS. Mr. Mitchell, maybe you could help us.

Mr. MITCHELL. Yes; I think the southwest area of Washington was designated.

Mr. TRIETSCH. It is specifically identified.

Mr. SHIPP. In the first line.

Mr. LEVITAS. Therefore, even though EPA said they didn't need it in southwest Washington, the requirement stayed in the final solicitation?

Mr. SHIPP. Yes, sir.

I might add from the standpoint of the way the operations were conducted in the region, the usual procedure was to advertise for listings of space. Not offers, but listings of space, maybe in a broad area.

It might have been in a whole metropolitan Washington, D.C. area, and developers and builders and potential lessors would list their space with GSA, and market surveys would then be conducted by on-site inspections to identify the buildings that could meet certain requirements with respect to location, amount of space, delivery date, et cetera.

So this is the way in which the various buildings that could provide competition or had space that we needed would be identified and I presume that is the case of No. 55; that type of survey was done to identify potential competitors that could meet the requirements.

Mr. MINETA. During this point did you negotiate with any other bidder or offerer of space, other than Town Management?

Mr. SHIPP. I do not recall negotiating with anyone else, but, as I indicated earlier, I talked with Mr. Quesada any number of times about his building, so they sort of all merged together from the standpoint that he was interested in leasing to us from time to time on various terms and conditions, but whether I talked with him specifically in this particular case, I do not recall.

Mr. MINETA. How many different potential offerors was Solicitation No. 55 which is dated January 19, 1971, distributed to?

Mr. SHIPP. According to testimony I have heard here today, it was issued to two.

Mr. MINETA. Who were those two?

Mr. SHIPP. Again, according to testimony I have heard, it is L'Enfant Plaza West and Town Center.

Mr. MINETA. According to the testimony before the Board of Contract Appeals, Mr. Shipp, you said it was only distributed to one.

Mr. SHIPP. That was what I believed at the time, but, as I indicated, I have heard something different here today.

Mr. MINETA. At the time you felt it was only one and that one was to Town Center?

Mr. SHIPP. Yes, sir, that is what I believed at the time.

Mr. MINETA. To your knowledge did any of the other negotiators working with you negotiate with other offerors for space to house the EPA?

Mr. SHIPP. No; I have no knowledge that they did.

Mr. LEVITAS. One point on this aspect before I get to the questions to Mr. Roush and Mr. Harvell. Is the dispute about the cafeteria, which ended up in the Board of Contract Appeals, about what was not required? We have already had the testimony of Mr. Shipp today, very clear and unequivocal, but, Mr. Trietsch, based upon your examination was the issue revolved around what was on page 27, specifically which was the right page 27?

Mr. TRIETSCH. Yes, sir, that is correct.

Mr. LEVITAS. Could you enlighten us any further on what that situation is at this time?

Mr. TRIETSCH. First of all, if I might briefly elaborate on a point that Mr. Mineta made, which I think has bearing on your question, Mr. Chairman, the record is pretty clear that at least two prospective lessors received solicitation No. 55, Town Center, and L'Enfant Plaza West, both of which indeed did submit offers.

Town Center, something like $2 a square foot less, was ultimately accepted by the Government.

With regard to the ultimate offer submitted by Town Center, what happened was that on page 27 of solicitation No. 55 there is language which clearly indicates that a cafeteria, a complete cafeteria shall be furnished by the lessor at his expense and that all space occupied by the cafeteria shall be excluded from the area covered by the lease.

Now, that in itself is pretty clear. That clearly is the language in the Government's copy of page 27. The reason I say the Government's copy is that obviously the lessor, for the first time on March 30, 1972, just prior to the meeting or during the meeting that Mr. Roush referenced, presented the fact—a year after execution of the lease—that he had what appeared to be a different page 27 in his lease document.

Now, keep in mind that the solicitation was incorporated into the lease and became an integral part of the lease itself, so it was page 27 of solicitation No. 55 which in fact then became part of the contract.

Now, what happened apparently was that during the negotiation period or even prior to the negotiation period—and this was testified to during the Board of Contract Appeals hearing by the Government representative, a GSA employee. She testified that a new paragraph 10 on page 27 was inset into the prospective lessor's copy of the lease prior to it being sent to the prospective lessor, in this case Town Center Management.

It is really unclear whether or not the GSA employee actually inserted the new paragraph 10, page 27, into the lessor's copy of the lease.

He obviously claims he never saw it and he produced an actual copy of a document which clearly only talked about food facilities as opposed to a cafeteria and that, of course, was the crux of his argument upon which he based the position that he did not legally need to provide a cafeteria.

The Government contended its page 27 clearly and unequivocally provided for a cafeteria.

Beyond that—and this is a much more difficult legal issue—the Government accepted in the February 12 amendment to solicitation No. 55, of 1971—this is Town Center Management's amendment—they accepted what is and ultimately became a very convoluted or conflicting provision.

In that February 12, 1971 amendment to the solicitation prior to the execution of the lease, Mr. Bresler, on behalf of Town Center Management, submitted a provision whereby under the title "Special Requirements," it was stated that a cafeteria or cafeterias shall be provided in accordance with paragraph 10(a) of schedule B of the offer.

Paragraph 10(a), schedule B of the offer clearly provides for the so-called free cafeteria in space not encompassed by the lease.

However, the following paragraph under "Special Requirements" clearly indicates that all special requirements, which clearly would include this cafeteria, would be at an actual cost to the Government plus 10 percent representing overhead, and 10 percent representing the contractor's profit.

Now, the problem with this, as was testified to by Mr. Shipp during the Board of Contract Appeals hearings, was that obviously one of his big concerns was a cafeteria they believed was clearly listed, in reference, on page 27 of the solicitation which became, of course, part of the lease.

However, he also testified that the fact that this was under the heading "Special Requirements" and thus required payment was, in his judgment, language which was in conflict and was in fact, in essence, noncontrolling.

Therefore, the language which he believed and he testified to as controlling was the reference made to paragraph 10(a), the free cafeteria language.

However, the fact of the matter, it is clearly, legally convoluted and confusing at this point in time and clearly it neither supports the Government's position nor assists the Government's position with respect to the free cafeteria issue.

Mr. LEVITAS. In analyzing all of that complexity in the conflicting versions and everything else, the Board of Contract Appeals held that there was a contractual requirement of the lessor to provide the cafeteria without cost to the Government.

Mr. TRIETSCH. The Board held that page 27 of the Government's version of the lease agreement—page 27 of the solicitation No. 55 was the bona fide copy, the authentic copy, the controlling copy.

However, that still does not get to the question of whether or not there ought to be payment for this cafeteria. So the fact of the matter is that the Board never addressed the question of who should pay for a cafeteria now that it is determined that a cafeteria is indeed clearly provided for by page 27 of the lease.

So they have not yet, or they never did reach that issue.

I agree that it is rather confusing. The Board simply held that page 27 of the Government's version of the lease was the authentic page 27 as opposed to Mr. Bresler's page 27.

However, beyond that, we must keep in mind that Mr. Bresler's February 12 amendment, which also was a part of the solicitation agreement, the document, also contained this "Special Requirement" provision which is clearly in conflict with page 27, even if the government version of page 27 is the accurate version.

So that still raises the question of whether or not the Government is entitled to a free cafeteria.

That question was not really addressed by the Board.

Mr. **Levitas**. As I read the Board of Contract Appeals' findings on page 15, and based on Mr. Shipp's testimony before the Board of Contract Appeals, among others, and again listening to his testimony today, it is my understanding that Mr. Shipp negotiated the lease and dealt directly with Mr. Bresler and Mr. Richey on this matter. During the negotiations Mr. Shipp testified he had taken the position that there was a requirement for the cafeteria to be provided under the lease at no additional cost to the Government.

Mr. **Shipp**. That is correct.

Mr. **Levitas**. Mr. Solomon.

Mr. **Solomon**. Mr. Chairman.

Concerning the missing document, Mr. Mitchell, you mentioned there was a summary. I have been trying to identify it to see if we have the summary. I have an exhibit E here, submitted by Doris Frankenfield. Is that the summary you were referring to or is there a different summary?

Mr. **Mitchell**. I presume that is the same one. I don't have a copy of it here with me, but GSA did put together what they called a fact sheet which explained what the two offers were and that is the summary I was speaking of.

Mr. **Solomon**. This is a fact sheet presented by her and I imagine that is what we are talking about.

Mr. **Mitchell**. I think that is correct.

Mr. **Solomon**. I just have a few more concluding questions, Mr. Harvell and Mr. Roush.

We are now going to move the framework forward to the early part of 1972. The testimony has been the GSA had insisted on the provision of the cafeteria at no cost to the Government. The issue about the withholding of the rent was discussed at the last hearing, and why the decision was made not to pursue that. But then there was that note, handwritten note, Mr. Roush, as I recall it, that you sent to Mr. Harvell—paraphrasing a bit, it was something to the effect, go ahead, move forward and put in a cafeteria, for the EPA people.

It was a handwritten note to Doug.

I would like to see if you could recall what brought you to that point at that time, Mr. Roush. And, what did you do based upon that note Mr. Harvell?

Let me read the note. I have a copy of it.

It says: "Doug—Re: EPA cafeteria. I think we should find some way to put a cafeteria in EPA space. Let's take that position and run. We may have some costs and problems but 3,000 employees need some government-controlled service."

This is signed by you dated May 5, 1972.

Mr. ROUSH. Yes.

Mr. SOLOMON. My question relates to the fact that, after having gone through that procedure with Mr. Barton, the rent withholding and then the decision not to withhold the rent with respect to the cafeteria, a few weeks later, you then write this handwritten note to Mr. Harvell saying: "Let's go forward and provide the cafeteria." Why?

Mr. ROUSH. I am not sure if some particular event created that or not. I have no recollection of anything in particular. I don't know.

Mr. SOLOMON. Did Mr. Ruckelshaus or your boss at GSA or anyone contact you about that?

Mr. ROUSH. No, sir, not to my recollection.

Mr. SOLOMON. What did you do, Mr. Harvell, after getting that note?

Mr. HARVELL. After getting this note, I interpreted that to mean possibly at our expense, which I picked up from the words there about the additional cost.

I sent it down to the project director, Mr. Adamec, and asked him to advise me on that issue and he sent a note back which I think you may have there, which says "Per agreement with Roush and Bresler, EPA will allow lessor until September 1 to produce three restaurants prior to taking any action.

On the basis of that, I did not pursue that action.

Mr. SOLOMON. So therefore, nothing was done. Did you ever hear anything further from Mr. Roush about this?

Mr. HARVELL. I don't recall. Events continued as apparently have been covered in previous testimony, but I do not recall specifically ever discussing this with Mr. Roush.

Mr. SOLOMON. Then, again in August 1972, there was another move to have Mr. Bresler install the cafeteria at no cost to the Government, but that never went forward.

Do you know, Mr. Roush, who made that decision? As I have said before, it seems to me that at one point Mr. Barton in effect said let's withhold the rent and go to the mat.

Then you come in a few weeks after that and after the meeting with Mr. Bresler and say, no, we are not going to do that. We will just go forward without that cafeteria. And you explained, as I recall, your reasons for doing that. But still there was the suggestion that at some time you were going to see that a cafeteria was provided. Finally, in August the idea was it was going to be provided as originally understood by Mr. Shipp at no cost to the Government, and yet from August 1972 until sometime in 1975, nothing happened.

My question is, Who made the decision not to do anything?

Mr. ROUSH. I haven't an answer for you. I have no recollection of that.

Mr. SOLOMON. Mr. Harvell.

Mr. HARVELL. I am not knowledgeable of such a decision. I am not sure that a decision in that connection was made. With the events that continued and other actions that did continue, it probably turned out that way, but I am not sure and I have no knowledge of the conscious decision being made not to do something.

Mr. SOLOMON. Mr. Roush, did you discuss this cafeteria situation with anybody else in the higher levels of GSA about what should or should not be done with respect to the cafeteria after May 3, 1972?

Mr. ROUSH. Not to my recollection. I may have. I have no recollection of doing so.

Mr. SOLOMON. Mr. Harvell, did you discuss the question about moving forward with the cafeteria with anyone other than Mr. Roush or Mr. Adamec?

Mr. HARVELL. Not to my knowledge, sir.

Mr. SOLOMON. Who was in charge of overseeing the completion and occupancy of the building?

Mr. HARVELL. The project coordinating officer was designated with that responsibility and was carrying that ball.

Mr. SOLOMON. That would be Mr. Adamec.

Mr. HARVELL. Mr. Adamec, yes, sir.

Mr. SOLOMON. Were you involved in any negotiations with Town Center Management with respect to the lease agreement itself, developing the final lease agreement?

Mr. HARVELL. I was never involved in any negotiations with Mr. Bresler on this lease.

Mr. SOLOMON. And no one else at Town Management?

Mr. HARVELL. No one else at Town Management, that is correct.

Mr. SOLOMON. I have no further questions.

Mr. LEVITAS. Mr. Trietsch, have you anything to add?

Mr. TRIETSCH. No.

Mr. LEVITAS. Mr. Mitchell.

Mr. MITCHELL. No, sir.

Mr. LEVITAS. I want to make sure I understand this, Mr. Harvell. The note you got from Mr. Roush—the May 1972 note—you in effect bucked it to Mr. Adamec.

Mr. HARVELL. That is correct.

Mr. LEVITAS. Mr. Adamec came back and said, before we do anything further about this, we will let him go forward with the restaurants.

Mr. HARVELL. Yes.

Mr. LEVITAS. Now, did you have any further involvement with respect to the cafeteria in any way, shape, or form subsequent? Contacts, discussions, memoranda, meetings, whatever, from the time you got the response back from Mr. Adamec in May 1972 concerning the cafeteria?

Mr. HARVELL. I don't recall any, sir.

My role as the deputy was to act in Mr. Roush's absence, of course, but I also had other assigned duties which I went about performing and was not always in the mainstream of these kinds of cases.

I was in and out. I do not recall discussing that.

Mr. LEVITAS. And Mr. Roush, the decision that was made not to withhold rent as the contracting officer had recommended, was that your decision?

Mr. ROUSH. No, sir. I think, as I pointed out in the last testimony, that was based on advice from the counsel's office, that we could not do so.

We could threaten to do so, but we could not actually do it. I believe after a bit more thought since that time, that it could have been a two-way street and there may have been some personal exposure if we chose to do that arbitrarily; particularly in the face of counsel's advice to the contrary.

Mr. LEVITAS. Who was the author of that advice?

Mr. ROUSH. I can't recall, but I believe that the advice on this matter was coming from Hugh Brister.

Mr. LEVITAS. Does the name Kaufman ring a bell?

Mr. ROUSH. I understand Mr. Kaufman worked for Mr. Brister. I just haven't that recollection.

Mr. LEVITAS. Was there anybody else in GSA's hierarchy who consulted you about that decision before you made it?

Mr. ROUSH. I don't believe so.

Mr. LEVITAS. Mr. Kunzig?

Mr. ROUSH. Not to my recollection.

Mr. LEVITAS. Mr. Sampson?

Mr. ROUSH. No, sir.

Mr. LEVITAS. Let me go back to that again because I want to get the names and sequence of events. It is your recollection that Mr. Brister advised that the withholdings of rent could not be legally successful?

Mr. ROUSH. I believe that is correct, sir. I want to make it clear. I am responding based on testimony I heard here the last time that there was a notation in Mr. Brister's file to the effect advising against the withholding of the rent.

Mr. LEVITAS. That would have been advice to you?

Mr. ROUSH. Very powerful advice, sir.

Mr. LEVITAS. You testified that the reason you took the action you did was based upon advice of counsel that you couldn't succeed?

Mr. ROUSH. Yes.

Mr. LEVITAS. Now, Mr. Mitchell, could you either elaborate or corroborate or inform us on that?

Mr. MITCHELL. I am afraid I would need General Counsel to help me on that.

At the time we did recommend that GSA withhold rent, even in 1977 when we issued our report. At that time GSA said they didn't think they had a case to withhold rent and never did withhold rent. I am not sure as to the reason why that rent wasn't withheld.

I think I would need legal counsel to comment on that, Mr. Chairman.

Mr. LEVITAS. The reason I asked the question is that in the GSA's Inspector General's report, which I gather was done by Mr. Trietsch, the notation with respect to this, and I will read from the report on page 7:

> The available record is not clear on what role, if any, the Office of General Counsel played in the series of communications between Public Buildings Service and the

> lessor during March and April of 1972 when the Assistant Commissioner advised lessor PBS would not withhold rent pending further study.

That would be Mr. Roush.

The footnote says:

> It should be noted that by June 30, 1972, the two attorneys, Hugh Brister, Assistant General Counsel, and Harold M. Kaufman, who concurred in the contracting officer's letter of February 28, 1972, that was to withhold rent had retired from GSA.

Is that correct, Mr. Trietsch?

Mr. TRIETSCH. Yes, sir, that is correct.

I believe that there was a concurrence by one or both of those individuals at the bottom of one the copies of that letter from the contracting officer, the February 28 letter.

Mr. LEVITAS. That is what this report suggests, Mr. Roush. According to what Mr. Trietsch has testified to and in this report, that, in February 1972, the Assistant General Counsel agreed with Mr. Barton in his February 28 letter of 1972 which advised that rent would be withheld.

Now, between that time and the time the decision was made in April not to withhold rental fees, my quesiton is, which counsel, if any, advised you not to go along with that?

Mr ROUSH. I can't be certain of that any longer, sir.

Mr. LEVITAS. Did he have any documentation in the record of advice from counsel, Mr. Schecter or Mr. Offenberg or anyone—because Mr. Brister and Mr. Kaufman, who retired from GSA shortly thereafter, after February 1972, according to what has been said, it was OK.

Mr. HARVELL. I recall some testimony, sir, in the last hearing that did indicate, and I do not recall who it was given by, maybe Mr. Adamec or Mr. Barton might have said in their dealings with the counsel's office that there had been some statement or advice on the part of our General Counsel's Office to those people against such action. I just recall that vaguely from the last hearing.

Mr. TRIETSCH. Mr. Chairman, if I may elaborate to clarify, the next sentence in the Inspector General report on page 7 indicates that by August 1972 the General Counsel's position partially had changed, at least as reflected in the project coordinator's notes of August 1972, so that between the late February date, when either Mr. Brister or Mr. Kaufman or both concurred in the contracting officer's letter, and August 1972, there would partially be a change in the counsel's position.

When that occurred is completely unclear from the record.

Mr. LEVITAS. It becomes very important, though.

Mr. TRIETSCH. There is no document.

Mr. LEVITAS. It becomes very important.

Mr. TRIETSCH. Very important.

Mr. LEVITAS. Because in February the lawyers said it is OK, Mr. Barton is right; Mr. Roush testified that the reason he reversed Barton is because the lawyers said you cannot do it.

Mr. ROUSH. May I add one additional factor. I believe intervening between the two dates we are talking about, we had again the discovery of the disputed and conflicting lease terms and I do not think that affected their opinion, but I do recall in the last testimony that that was there, and I believe I elaborated on it slightly then.

Mr. LEVITAS. What occurred, as I recall the testimony, is Barton writes his letter on February 28. Bresler gets on the phone and says "I want a meeting." The meeting is the meeting where the revelation of a diversion of the contract is made, and the statement that therefore there is no responsibility to provide the cafeteria. And, subsequent to that meeting, Mr. Barton's position was overturned. I do not see anything in there, any documentation of any change in position as far as counsel is concerned, until around August 1972, and so, therefore, it is critical. You do not have any further recollection of that, Mr. Roush?

Mr. ROUSH. No, sir, I am sorry, I do not. And certainly no access to any documents.

Mr. TRIETSCH. I might add the files of the General Counsel do not contain a copy of any memorandum of written opinion that may have been issued after March 1972. There is simply no record.

Mr. LEVITAS. I do not have any further questions. Gentlemen, thank you very much. If you have nothing further to contribute at this point, I want to thank you for your participation today.

Mr. SHIPP. Thank you.

Mr. LEVITAS. We are going to take a recess so people can have something to eat. We can come back and complete the proceedings in rather short order this afternoon. I would suggest that we stand in recess for an hour and then reconvene.

The subcommittee will stand in recess.

[Whereupon, at 1:07 p.m., the subcommittee recessed, to reconvene to 2:07 p.m., the same day.]

AFTERNOON SESSION

Mr. LEVITAS. The subcommittee will come to order.

I believe, Mr. Galuardi, you have been previously sworn.

Mr. GALUARDI. Yes.

Mr. LEVITAS. Mr. Whitlock and Mr. Sickon?

Mr. GALUARDI. I would like to have a member of counsel with me, too; Anthony Borwick. So while you are swearing——

Mr. LEVITAS. Anthony S. Borwick?

Mr. BORWICK, Yes, Mr. Chairman.

Mr. LEVITAS. Please come forward.

[Messrs. Whitlock, Borwick, and Sickon sworn.]

TESTIMONY OF JOHN GALUARDI, DEPUTY ASSISTANT COMMISSIONER, PUBLIC BUILDINGS SERVICE GENERAL SERVICES ADMINISTRATION; JAMES WHITLOCK, ASSISTANT COMMISSIONER, SPACE MANAGEMENT, GSA; JOSEPH SICKON, INSPECTOR GENERAL, GSA; AND ANTHONY S. BORWICK, COUNSEL, GSA

Mr. LEVITAS. Mr. Sickon, I have a number of questions, but let me start off with a general question. When we had hearings earlier this year on this subject about the handling of this Waterside Mall lease by GSA, quite apart from some of the other considerations which are involved in this whole matter, I think it is a fair understatement to say that the members of the subcommittee were very disturbed by the results of the Board of Contract Appeals ruling because, essentially, what that ruling held was the Government of the United States, the taxpayers, GSA, had certain valuable contract rights, and as a result of actions or inactions by officials at GSA, those rights were lost.

We heard testimony that important lease documents were missing from GSA files. We heard some testimony today about documents that cannot be found. We heard testimony about poorly worded contracts, contractual provisions. We heard more testimony about that today. And a great deal of testimony both last time and today about lack of aggressiveness, perseverance, and pursuing rights which the United States has.

After those last hearings, as you recall, I wrote a letter and asked that you make an evaluation as Inspector General to determine what procedures GSA may now have in place to avoid a recurrence of this type of situation. I felt that this additional day of hearings, and I am anticipating at least one more day, would be an appropriate time for you to share with us and for the record, a status report as to the progress that you have made with respect to your findings.

Mr. Sickon. Mr. Chairman, based on your letter to me, I asked my staff to pull together and evaluate all of the audit and inspection reports that had been produced in the Office of Inspector General from May 1980 through September 1981. When we collected all those reports, they totaled over 100 that dealt generically in the leasing area. From those 100 reports, many of them out in the regional levels, and there were duplications of areas, we focused in on 42 specific audit and inspection reports, and I stress inspections because it gives us in the Office of Inspector General, GSA, a different flavor as you could perceive this morning from Mr. Antonelli's testimony, and we are currently in the process of trying to focus in on what major deficiencies currently remain.

Some of that analysis showed that we had at least 14 major areas that these reports disclosed, and some of them did deal with the source proposals, they dealt with documentation, the solicitation process, prospectus approval, timeliness, organization, so it covers a myriad of topics. We are trying to now focus in on these 14, and bring them down to a manageable audit report that we can share with the management of GSA and this committee, and I hope that by this interdisciplinary approach using auditors, investigators, and inspectors, and also our special projects legal staff, that we should be able to come up with some very thoughtful and to-the-point recommendations that would be helpful in the area.

Mr. Levitas. I am not going to hold you to a specific time, but do you have any estimate as to when you think you would be in a position to share that with us?

Mr. Sickon. I would say within the next 60 to 90 days, Mr. Chairman.

Mr. Levitas. It just seems to me that if I were a manager at GSA, as Mr. Galuardi and Mr. Whitlock are, that some of the things I have heard over the last few days of hearings involving this contract may or may not be unique. If they are unique, that may raise more serious questions, but to build a series of procedures so that this type of situation could not recur, and so that whether Mr. Shipp stays or goes, or Mr. Harvell stays or goes, there is something that throws out a warning flag and says look, we have got a valuable right that is not being provided, and we need to do something about it.

Mr. SICKON. I totally agree, Mr. Chairman. We will be looking at those systems very carefully.

Mr. LEVITAS. There is one other thing that I want to mention to you, and I am not being premature. All of us have formed certain judgments. I have not formed a final judgment, and that will not be done until we write our final report. But just based on the transcript of the Board of Contract Appeals hearings, in which testimony was taken under oath, the possibility of perjury exists in that transcript. And it just seems to me that somebody ought to take a look at that.

Mr. SICKON. Mr. Chairman, we will. I will have my person, Mr. Trietsch, who is certainly the most familiar with the facts of this case and has done more research on it than probably anybody else in GSA, I will have him look at both transcripts and see if that exists, and if it does, we will make the proper referencing.

Mr. LEVITAS. Thank you.

Mr. Galuardi, what actions have been taken now to upgrade and standardize the wording of GSA lease agreements with respect to matters like cafeteria facilities, for one example, or other special facilities?

Mr. GALUARDI. We have done a few things and we think they are in the line of trying to prevent this sort of thing from happening again. Based on what we know about it and what the hearings here have disclosed, we have put out a revised leasing handbook. That has been issued to all of the regions. It is current and provides the up-to-date leasing regulations for all regions, and it represents the bible or the handbook for the leasing officer to use. Hopefully, it does now spell out all the things they are supposed to do, all the forms they are supposed to use, and so forth.

One of the things that this hearing and the Board of Contract Appeals brought out was the fact that there may have been a discussion of a page in a solicitation for offers which ultimately become a part of the contract. We have developed a computerized system for solicitation for offers. What this does and the way is must work is that any one of our leasing officers out in the regions who wishes to issue a solicitation for offers is tied into a central computer which we control at the central office, and out of it comes this prepunched and precomputerized solicitation for offers. It is consecutively numbered, typed in such a way that the pages follow one another, and there is no longer any picking papers off a shelf and trying to collate them for making a solicitation for offers. This system would make it extremely difficult for that sort of a thing to recur.

Mr. LEVITAS. Let me ask you right there. One of the mysteries is the inability of anybody to lay their hands on a copy of what is known as solicitation offer No. 40. Now, even if it were not a critical document in this whole scenario, the fact that there is no copy of a solicitation or any other significant procurement document in the files of GSA is a real problem to me. Could this occur again?

Mr. GALUARDI. Well, the computer keeps a record of every solicitation for offers which is requested, so within that computer tape we have copy of all the solicitations. We also have done something which has been very helpful. In the time period in which this other lease was made, I would have to say that the method in which we kept our contract files was not as disciplined as they are now. We established a very disciplined system in that there is a listing of every document which must be in contract, and they are filed by number, and in every one of the lease files now, contract files, you have a very orderly system. This solicitation for offers that you are talking about has to also be in hard copy in that particular folder.

You have also heard testimony that we have established a precontract award system. And under that precontract award system, leases which are over the entire term of the period of the lease, in excess of $1 million, are submitted to the central office to a contract review organization which is in the Public Buildings Service. At this point, that well-disciplined, orderly file that I was talking about comes into play, and if there are glitches in the contract, the regions are so notified and they must correct them before the contracting officer can proceed with the contract. So we have built in a more disciplined system along with trying to find all of the errors that were made that have been brought to our attention here, and I think we are now putting into place a system which will work.

One of the other things that I have done is, to required that if a cafeteria provision is to be placed in a lease solicitation for offers, that the regions must get the prior approval of the Commissioner of the Public Buildings Service so that we will be able to determine whether or not first of all it is needed, and second, if it is contracted for and required, that we follow up to see that it is in fact provided. Prior to my coming up here to appear before the committee I did ask our contract assurance organization to do something for us, and that is to go back and look at every lease that we now have that is active to determine whether or not a cafeteria requirement was placed in the lease requirements and to make a determination as to whether or not we did in fact get the delivery of the cafeteria service. And the answer I got was that yes, we have received every cafeteria except this one.

Mr. LEVITAS. Except this one. What is your present position at GSA?

Mr. GALUARDI. I am now the Deputy Commissioner of the Public Buildings Service.

Mr. LEVITAS. The Commissioner has been recently appointed?

Mr. GALUARDI. Mr. Haase came on board this past Monday.

Mr. LEVITAS. Mr. Whitlock, what is your present position?

Mr. WHITLOCK. Assistant Commissioner for Space Management.

Mr. LEVITAS. That position has responsibility for managing leases, making certain that the Government negotiates as favorable terms as it can for the lease, and making certain that what is contracted for is delivered; is that correct?

Mr. WHITLOCK. Yes, sir, as a practical matter that is to develop the policy that controls the process for assigning the space, for leasing space, the appraisal, and the planning operation. That is the Office of Space Management.

Mr. LEVITAS. What about contract management?

Mr. WHITLOCK. Contract management is the result of another Assistant Commissioner, Arthur Ronkovitch, who has a specific function to review the contracts as processed.

Mr. GALUARDI. He is independent of Mr. Whitlock, so there is another separation of the requirements for contracting.

Mr. LEVITAS. Let us take a lease construction project of some sort. When Congress approves the prospectus on the lease, and you have been up here, you have testified about the lease, and about the prospectus, and it is now approved, what then is your responsibility with respect to that lease after it has been approved by the Congress?

Mr. WHITLOCK. That is, of course, the separation that Mr. Galuardi just mentioned. It is my responsibility to come before the Public Works Committee or the subcommittee on the lease approval for the authorization, and it is also our responsibility to write the policies that would affect how that lease is awarded. It then becomes Mr. Ronkovitch's responsibility for reviewing the contract. That is the separation that exists in this operation. It is new within the last couple of years.

Mr. GALUARDI. Let me carry it a step further. There is a counterpart organization to Mr. Whitlock's in the region, and after this committee has authorized a project Mr. Whitlock prepares the letter, and the Commissioner notifies the region that the public Works Committee has authorized the project. It is sent to the Regional Administrator in that region, and the responsibility now rests with him or her to perform the contracting. That Regional Administrator will use Mr. Whitlock's counterpart organization in the region for the purpose of doing the contracting, preparing the solicitation, getting it on the market. When the contract is ready to be signed, then it is submitted back to the central office to Mr. Ronkovitch's operation.

Mr. LEVITAS. Mr. Whitlock, you have heard most of the testimony during these hearings, or, I am sure, have been familiarized with it. Speaking in terms of before and after, are you comfortable with the present procedures that have now been put in place to avoid a recurrence of this type of situation?

Mr. WHITLOCK. Well, Mr. Chairman, we have in the last several years been extremely concerned about the types of things that were mentioned throughout this morning's hearing, and all the things that have been done in the last several years have been, of course, to preclude not only this type of recurrence, but there are probably 150 issues in each solicitation and all of those aspects, many of which could have been contested like this one was, the elevator capacities or the number of toilets in a rest room, those are issues that can be contested in a lease. We have spent a lot of time and tried to clarify and put into standardized language so that it appears all over the country in the same format, so that we do not have these variations of interpretation in the contract. That is our major effort in that respect. At this point in time we find it is working fairly well.

Mr. LEVITAS. I have no further questions. Counsel, I am advised, has no question at this time. Mr. Mitchell, is there anything you would like to contribute?

Mr. MITCHELL. No, sir, Mr. Chairman.

Mr. **Levitas**. Mr. Trietsch.

Mr. **Trietsch**. No, sir.

Mr. **Levitas**. What I would like to do at this point is ask that this panel be joined by the officials of the Environmental Protection Agency, Dr. Horton, who is the Assistant Administrator for Administration who has been here with us before, Mr. Matthew Novick, and Mr. Steven McNamara. Mr. Novick and Mr. McNamara, I do not believe you have been sworn.

[Witnesses Novick and McNamara sworn.]

TESTIMONY OF JOHN HORTON, ASSISTANT ADMINISTATOR FOR ADMINISTRATION ENVIRONMENTAL PROTECTION AGENCY; MATTHEW NOVICK, INSPECTOR GENERAL; AND STEVEN McNAMARA, CHIEF, INTERNAL AUDITS STAFF, OFFICE OF THE INSPECTOR GENERAL, EPA

Mr. **Levitas**. Thank you.

Dr. Horton, welcome back.

Mr. **Horton**. Thank you, sir.

Mr. **Levitas**. At the occasion of our last hearing when this matter was first discussed, there were a couple of things that came up which were then being put in process, and one of them was that you, Dr. Horton, were going to be meeting with officials at the General Services Administration, and you testified at that time, let me quote:

> It is the opinion of our General Counsel that we should push GSA to appeal the decisions that have been made to reopen the case, and if the landlord is unable to provide us with cafeteria services, then to provide financial restitution for 10 years in which the necessary contract amendment was not made and to get an alleviation of lease payments in the future because it is not there.

That is the portion of your testimony. And you, as I indicated, were meeting with Mr. Carmen, who is the Administrator of GSA, to discuss this whole issue. I wonder if you could enlighten us on the result of your meetings and discussions with Mr. Carmen and his staff.

Mr. **Horton**. Yes, sir, I met with Mr. Carmen and Mr. Davis of Mr. Carmen's staff. We discussed the matter generally, and what our concerns were. We then agreed to contact our respective Inspectors General about the matter and have them look into it. As a result of that, Mr. Novick and his group evaluated the situation and issued a report, which I believe this committee has a copy of, indicating a value of some $755,000 in terms of rent that they calculated would have been paid for missing facilities. We wanted to pursue this further. Mr. Novick met with Mr. Sickon, the GSA IG, and looked into the matter further.

On October 30, we had a second meeting in which we had both the IG's from EPA and GSA. We had representatives of General Counsel from both EPA and GSA. We discussed the matter at some length at that point in terms of additional information that had been uncovered, and particularly the ability of EPA to appeal or to have GSA appeal the ruling of the Board. In 1978, a law was passed wherein we would have had the ability to appeal that ruling provided that the matters to be appealed were going to be addressed to the Board, I believe starting in 1979. Unfortunately, this matter had been addressed to the Board prior to that time. When our General Counsel had originally given me the advice that we could go back and reopen the case, he was not aware of the exact time at which the case had originally been introduced to the Board. As a result of that he has subsequently advised me that we do not have the right to go back on the appeal with that Board simply because the case had been introduced prior to the cutoff time in which the legislation enacted in 1978 was applicable. Under the circumstances, he has indicated that we do not have the ability to go back and appeal that decision, nor do we have the ability to do very much else, in his opinion, in terms of requiring the landlord at this point to supply a cafeteria, to obtain restitution for the funds, or any other action.

I have spoken with our General Counsel and told him that I appreciated his legal advice and that that was unsatisfactory to me, and that I intend to pursue the matter further. If you ask me at the moment what do I expect to do, I must tell you that I am not yet certain as to the best approach. But I really feel that somewhere along this process, as you do, Mr. Chairman, that something isn't right, and that offends my sensibilities. If I can find some other way to attack this problem, I will.

Mr. LEVITAS. I am going to explore that with you in just a minute. I want to put something else in perspective. There is one thing I might ask you right now. As I understand it, EPA pays to GSA a standard level user's charge.

The SLUC fund. That is the acronym. That is, in effect, rent that your Agency pays for occupancy of these facilities?

Mr. HORTON. It is a fee we pay to GSA taking care of the occupancy and maintenance costs and that sort of thing.

Mr. LEVITAS. And that comes out of EPA's budget?

Mr. HORTON. Yes, it does.

Mr. LEVITAS. Since you are occupying space, you are paying the lease, or the SLUC payment on space which does not contain the missing cafeteria. I understand it is your position that your SLUC payment should be reduced and the overpayments for the last 10 years should somehow be credited to your contract, is that correct?

Mr. HORTON. My position is that EPA has not gotten the services that it was supposed to have obtained. Now, I am not really sure nor do I want to dwell particularly as to whether that was GSA's fault or the landlord's or whose it was. All I know is that we do not have what we were supposed to get. Therefore, if we are not going to get the facilities that we ought to get, there should be some adjustment made.

The way the SLUC charge works is it is really independent of the amount of rent that GSA pays the landlord. In other words, the lease fee that we pay to GSA is dependent on an assessment as to what the commercial lease value is and is independent of the rent that is actually being paid.

In other words, if GSA obtained a change in the lease from a landlord, that might not necessarily affect our SLUC charge.

Mr. LEVITAS. Mr. Novick, the Inspector General at EPA prepared an audit report which was dated September 9, 1981.

Mr. NOVICK. Yes, sir.

Mr. LEVITAS. That audit report was completed several days prior to Dr. Horton's last testimony. I also am advised that there was a supplementary report dated December 2, 1981, revising the September 9 audit report. I wonder if you could describe for the record what the first report was and what the nature of the revisions of yesterday are?

Mr. **Novick**. I will be happy to, Mr. Chairman. The Assistant Administrator for Administration, Dr. Horton, provided us a copy of the GSA investigative report dated July 16, 1980, and asked for our perspective on it. He wanted to know the extent of the loss to EPA of payments made for the cafeteria which was not delivered. He asked us to prepare a report that he could use when Mr. Carmen came to discuss the missing cafeteria and we did that. That was the initial report.

It was based on the lease information that was available to EPA and all correspondence that we could identify within EPA on the cafeteria question. Of course in that initial report, we recommended that Dr. Horton request GSA's IG to reopen this investigation of the differing versions of clause 10(a) or request me, the IG for EPA, to do so if GSA declined. We also recommended that he negotiate with GSA and take action to recover the $755,635 of implicit rental payments.

We also recommended that he negotiate a new rental rate with the lessor through GSA to consider the impact of the undelivered cafeteria.

Subsequent to our issuing that report for discussion with Mr. Carmen, we met with Joe Sickon, the IG for GSA. We were then advised of additional information that was not available previously to EPA. We had many discussions with members of Mr. Sickon's staff and we agreed to extend our audit to include that additional information and to revise our report if it was appropriate.

In the revised report we advised Dr. Horton of the additional information that was available to us and the course of action that we intended to take.

In the revised report we stated that the GSA's IG had addressed the issue of the differing versions of clause 10(a) and we no longer recommended that the investigation be reopened. We also stated that this position was based on our subsequent meetings with GSA's IG at which they provided us with a copy of the previous report on investigation, minutes of the Contract Board of Appeals case and discussions with them.

In preparation of our report, we went to the General Counsel and sought a legal opinion as to what courses of action we could take and the questions that were asked are in that revised report. The answers given more or less coincided with what Dr. Horton has provided.

Mr. **Levitas**. One of the questions that is contained in the December 2 report is does the Government have the right to recover any funds from the lessor by setoff or otherwise for the missing cafeteria. Am I correct that the opinion of the General Counsel is that there will be no right to make such a recovery?

Mr. **Novick**. That is correct. The legal opinion of the General Counsel for EPA, and I think corroborated by the General Counsel of GSA, is that because the Board of Appeals indicated that we had abrogated our right to have the lessor comply with section 10(a) that we had abrogated our right to collect any back rental because of the failure to provide such a cafeteria.

Mr. **Levitas**. I want it very clearly understood for the record, and this is not just a meaningless disclaimer—it is a sincerely meant disclaimer, because I do not want to prejudice or have any preconceptions, but in order to explore other possibilities, I have to ask the question.

Mr. **Novick**. Yes, sir.

Mr. **Levitas**. The IG's report and the legal opinion which you just referred to does not so far as I can see address the question as to whether or not there would be some right of recovery in the event the actions which occurred that ended up in depriving the Government of its right as determined by the Board were in consequence of unlawful, criminal acts which were concealed.

Mr. **Novick**. You are absolutely correct, sir.

Mr. **Levitas**. My question is, would that have any legal bearing if that were the case, and I am not suggesting that that is, I am just asking a hypothetical legal question. If that were the case, do you know whether it would change the opinion?

Mr. **Novick**. I can only volunteer, sir, that in my opinion if the General Counsel of EPA knew of such information that his legal opinion would be different.

Mr. **Levitas**. Does anyone else have any thoughts on that?

Mr. **Sickon**. Yes; Mr. Chairman, I think if there were illegal acts that influenced that decision of the Board of Contract Appeals and we had sufficient evidence for referral, I do not know if it would change the legal opinion here, but I certainly think it would change the mind of the IG at GSA as to whether or not it should be referred to Justice for prosecution or determination. I think that is the attitude that I would tend to take.

Mr. **Levitas**. Mr. Roush testified today—and I am not going to try to characterize any testimony one way or the other, I am just going to say that one of the things he said today earlier, when asked by me what were the reasons that you decided to overrule the contracting officer and not withhold rent at the time the issue was presented, was based upon a dispute that had arisen as to what was in the contract. There were two versions of the contract that were produced at a meeting held in early March of 1972.

And he stated that one of the reasons that he did not uphold the contracting officer was because of the conflict that was the result of those two versions of the contract.

Now, I do not know—I am not even suggesting that it occurred, but I do not know whether a deliberate substitution of a page in a contract for purposes of avoiding an otherwise binding obligation constitutes an unlawful act. I do not even know whether that is true or not.

But it just seems to me something that ought to be considered. Dr. Horton, you were saying you were looking for other thoughts on the subject.

Mr. **Horton**. Yes, sir. I probably feel as frustrated as you do that we are not able to get to the heart of all this, although I must say I have not given up yet.

Mr. **Levitas**. Nor have we.

I think we are getting closer and closer, frankly. Today has taken us a little bit further than we were in September. As I indicated earlier, we are going to get back to it before we are through.

Mr. NOVICK. May I add something, sir?

Mr. LEVITAS. Yes.

Mr. NOVICK. In our attachment, page 6 of our revised report, we state that prior to the Contract Disputes Act the Agency's appeal rights were defined by *S&E Contractors, Inc.* v. *United States,* 406 U.S. (1972), in which the Supreme Court held that absent fraud or bad faith the Federal agency's settlement under the disputes clause is binding on the Government and that the decision of an agency board is final and conclusive.

Mr. LEVITAS. That was if I remember correctly, and it has been some weeks now, I think Mr. Ting made reference to that court decision as being part of the basis for his view of the situation.

Mr. NOVICK. Yes, sir.

Mr. LEVITAS. Leaving other hypotheses aside, what that means is the General Counsel has advised that if the Board of Appeals decision were not appealed within a timely fashion, that it then became conclusory and that was the end of it?

Mr. NOVICK. Except where the testimony could be proven to be an indication of bad faith.

Mr. LEVITAS. That is another possibility.

The situation as it exists now is between EPA and GSA, or collectively.

EPA is seeking to have its standard level user's charge reduced by some amount in order to reflect the services it is paying for under that charge.

Dr. Horton is not giving up and is going to keep poking and pushing to see if there are some other ways in which this matter can be further pursued.

GSA is in the position of agreeing with EPA General Counsel's view of the matter, again leaving other hypotheses aside.

Now, Mr. Galuardi, when you testified previously in September, you indicated to us GSA officials intended to reopen investigations into the case of the missing cafeteria. What is the current status of that?

Mr. GALUARDI. Mr. Chairman, the Administrator asked Mr. Sickon to conduct the investigations because that is his arm for the purposes of conducting investigations, and I would have to refer that question to Mr. Sickon.

There was a meeting held yesterday with Mr. Carmen and most members of the GSA staff involved in this, and Mr. Carmen was of the same opinion as Dr. Horton that if there is any way in which we can make a recovery under this contract, GSA wishes to do so. The suggestion has been made that neither of us, as agencies, can on our own seek recovery. The recovery must be done by the Department of Justice, and that we are in the process right now—in fact, Mr. Borwick is the one doing it—of writing a letter to the Department of Justice providing them with all the facts that we have and to see what action the Department of Justice would take in this case.

Mr. LEVITAS. Mr. Borwick, would you further enlighten me on that?

Mr. **Borwick**. Even though it is my feeling we have no legal recourse because of the Board of Contract Appeals opinion, we are referring the matter to the Civil Division of the Justice Department for their review, to see if anything can be done to recover those monies paid as rent for that space which has been put aside for the cafeteria, for which we paid additional rent. I drafted a letter last night; we are typing it this morning; it should go out fairly soon. I have yet to gather some documents we need to present to the Justice Department, and I will be engaged in that process.

Mr. **Levitas**. Will you make a copy of that letter available to us for the record?

Mr. **Borwick**. Yes, sir.

[The information follows:]

General Services Administration,
Office of General Counsel,
Washington, D.C., December 4, 1981.

Subject: Appeal of Town Center Management Corporation, GSBCA No. 4574-R.

Stuart E. Schiffer, Esq.,
Deputy Assistant Attorney General, Civil Division,
Department of Justice, Washington, D.C.

Dear Mr. Schiffer: In pertinent part, the General Services Board of Contract Appeals (GSBCA) decision in subject appeal found: (1) the lease contained language that required Town Center Management Corporation (Town Center) to furnish the Government a cafeteria in the Waterside Mall complex, in space not covered by the lease and at no cost to the Government (that the Government version of a page 27 thereof properly was part of the lease); and (2) to the extent the requirement constituted a right, the Government waived the right by inaction. GSBCA elected not to address the question of who should pay for installation of the cafeteria if there were no waiver.

Town Center's position of denial of a cafeteria without additional rental has caused the highest officials of the General Services Administration, as well as members of Congress, some concern. We recognize that under the doctrine of *S&E Contractors, Inc.* v. *United States,* 406 U.S. 1 (1972), and *Pierce Associates, Inc.* v. *United States,* 617 F.2d 223 (Ct. Cls. 1980), the Government may not appeal from the GSBCA decision.

However, we are soliciting your assistance in determining the feasibility of an action at law or suit in equity against Town Center that will result in the Government being furnished a cafeteria at no additional rental, or alternatively, to recover monies paid for space originally designated by Town Center for a cafeteria.

For your immediate consideration, we enclose a notebook containing the decision and pertinent documents and a copy of the December 2, 1981, memoranda of Environmental Protection Agency Inspector General.

We will be happy to supply any additional information and to meet to discuss the matter. We can be reached at 566-1200.

Sincerely,

Allie B. Latimer,
General Counsel.

Mr. **Levitas**. I am pleased to hear that. I don't know what will result from it, but the Administration and Congress, as you know, are extremely interested now in dealing with waste and abuse and fraud and making certain the taxpayers are getting what they pay for. This is clearly an example of the taxpayers not getting what they pay for.

There are all manners of explanations of what happened. I am sure everybody has his or her own opinion as to what happened. It seems to me the one thing that is certain is that—and I am stating my position—there was a contract which provided for the cafeteria, and there was no cafeteria delivered, and the taxpayers are out that amount of money, and the employees at EPA have not had the service for the 10-year period that it hasn't been there—which they were entitled to have.

We have heard from the employee representatives at one of our earlier hearings. In most organizations or in all organizations that I am aware of in the private sector, if that happens, something would happen. I mean, whether it would be somebody being sued or the person responsible for screwing up getting canned; I mean, now, there are all sorts of things, but clearly here is a situation where the Government had a right, and we don't have what we were entitled to.

Aside from at least the hope that these oversight hearings will avoid that recurrence—and that is why I wanted to hear from Mr. Galuardi and Mr. Sickon today—there still seems to be the need to leave no stone unturned, no hypothesis uninvestigated, which could make some effort to recover for the taxpayers that which they were entitled to or to hold accountable those people who lost for the Government something in the neighborhood of $750,000.

By the way, either Mr. Sickon or Dr. Horton, if you could provide us for the record the means by which the $755,000 figure was arrived at, I would like to have that information.

Mr. HORTON. That was Mr. Novick's determination.

Mr. NOVICK. I would like to have Mr. McNamara address that. He is the one who computed the numbers.

Mr. LEVITAS. Mr. McNamara, would you describe your involvement in this whole mattter from the time you first stumbled across it until today?

Mr. MCNAMARA. I am the Chief of the Internal Audits Staff here in Washington. In the normal course of business, we got the audit request from Dr. Horton to provide our perspective on the GSA investigative report prepared by Dennis Trietsch to review the lease and see if we could agree with Dr. Horton that GSA had lost some sum of money for service not delivered, and to determine how much money that was.

We performed the initial audit, the report being issued September 9, 1981. Subsequently, our office conducted additional work and gathered more information and requested a legal opinion from the EPA General Counsel and issued a second report on December 2, 1981. That answers how we got into it.

Mr. LEVITAS. Your first involvement in this whole matter dated from early this year?

Mr. MCNAMARA. Yes, sir.

In terms of how we calculated the amount, in the Government's version of clause 10(a) of the lease, it provided specifically for how the size of the cafeteria would be determined, based on space, number of employees, and so forth.

We used GSA form 65, which is the form EPA gets from GSA showing us the amount of space that we have and the price to us for that space. As we mentioned in the audit report, we are not entirely certain, nor was EPA entirely certain, we had received all of these documents from GSA, so the report is qualified to that extent if any are missing.

Basically, we just ground through the calculations based on occupancy over the years under the terms of the lease, using the SLUC rate, which is not the actual rental charge, but has other charges in it that GSA charges EPA; but since we could not see behind that, we used that as an approximation of what the loss to EPA was. That would not necessarily be the loss to the Government.

Mr. **Levitas**. The loss to the Government could be different?

Mr. **McNamara**. It could be.

Mr. **Levitas**. It would be?

Mr. **McNamara**. It would be.

Mr. **Levitas**. The information which Mr. Borwick is providing to the Justice Department—are you, Mr. Novick, working with Mr. Borwick in providing any documentation, or anything of that sort?

Mr. **Novick**. We haven't been requested to provide any information, Mr. Chairman.

Mr. **Levitas**. Mr. Borwick, do you have any need to get some of the information they have been putting together?

Mr. **Borwick**. I would be happy to obtain all the information and all the documents these gentlemen have.

Mr. **Levitas**. I haven't seen the letter that you are sending forward yet, and therefore I can't make any judgment about it, but I would hope that it is a sincere and bona fide effort to explore all possibilities as to how the Government can be made whole. As I said, I don't know what can be done. I don't think, given the attitude today in Washington about waste, fraud, and abuse, that we cannot leave any stone unturned, because this is such a classic example of how Government gets a contract and doesn't get what it contracts for.

Mr. **Borwick**. I can assure you we will leave no stone unturned. We will explore every possibility with the Justice Department.

Mr. **Levitas**. I think I may have only one further question, but I will ask counsel if he has anything further.

Mr. Treitsch.

Mr. Mitchell.

Dr. Horton, as I indicated earlier, I suppose we have, as a subcommittee, two functions in this matter. One is the investigative function which we are still probing, and the other is the oversight function.

I have no doubt, based on what I have already heard from GSA, that the oversight function has already had some effect, and hopefully there will be some reason to think this type of thing could not occur again.

On the investigative part of it which deals with this particular matter, there are still some questions to be answered, and your continued interest, as I have heard you say—and I am very pleased and gratified to hear you say—I think will be of great value, because I know it is troublesome, to say the least, to have this type of situation. I would hope that you will keep the subcommittee advised currently of what is being done by you, what other thoughts or avenues you may pursue down the line.

Mr. **Horton**. I will certainly be happy to do that, sir.

Mr. **Levitas**. One thing came out today, for example. It is interesting how every so often something new comes out. In preparation of that solicitation for offers No. 55, which was the basic document under which this lease went into, when GSA sent this to EPA for review, Mr. Nies, I believe it was, at EPA, commented back to

GSA, we don't care whether it is in southwest Washington as long as it is in the general downtown Washington, D.C. area.

Yet that southwest Washington designation remained in the solicitation for offers No. 55 which had the effect of significantly limiting the number of available competitive offerors. That is something we will probably get at, at our next hearing.

As I say, I think we are getting closer to narrowing the issues. I am not sure we will ever know exactly the whole story, but I think at the end of our next hearing, which is yet to be scheduled, we will be very, very close to resolving that as far as we can.

Does anyone else have anything to offer for the good of the order? If not, I want to thank all of you for your participation in these hearings today. It has been quite helpful, quite informative.

Mr. Borwick, when you finish that draft of the letter, you will send us a copy of it so we can make it part of the record.

Mr. **Borwick**. I will, Mr. Chairman. I just wanted to tell you the furnishing of that letter will be only the start of our conversations with the Justice Department and not the end. We will be having continuing conversations. That letter will be an initial referral going back to the Justice Department to educate the department on all that was done.

So it is only the start of the process.

Mr. **Levitas**. I am sure you will have plenty of opportunity to meet with them about this matter.

If there are no further contributions or comments, then the subcommittee will stand in recess, subject to the call of the Chair.

[Whereupon, at 3:15 p.m., the subcommittee recessed, to reconvene subject to the call of the Chair.]

REVIEW OF GENERAL SERVICES ADMINSTRATION'S LEASE MANAGEMENT AT WATERSIDE MALL

TUESDAY, DECEMBER 14, 1982

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Washington, D.C.

The subcommittee met, pursuant to call, at 10 a.m., in room 2167, Rayburn House Office Building, Hon. Elliott H. Levitas (chairman of the subcommittee) presiding.

Mr. Levitas. The subcommittee will please come to order.

The Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation has been conducting hearings on the negotiation and implementation of the contract lease agreement for the Waterside Mall complex in Southwest Washington, D.C.

Today's meeting will hopefully conclude the subcommittee's longstanding inquiry into the reasons for, and the ramifications of, the GSA Board of Contract Appeals decision in March 1980 that the Agency, namely, the Environmental Protection Agency, had lost its right to have a cafeteria installed by the lessor at the Waterside Mall Complex for use by employees of the Environmental Protection Agency.

Testimony developed at two previous public hearings on this matter revealed that the estimated cost to American taxpayers, resulting from a de facto waiver of this right, amounts to $600,000.

There has also been public criticism in the press of the manner in which the GSA negotiated the cafeteria provision of this lease agreement, and a congressionally mandated General Accounting Office report which was highly critical of the lack of aggressiveness on the part of GSA officials.

We have been advised there was inadequate recordkeeping and files in the GSA, and one agency official alluded to legal solicitations so poorly worded that it was, and may still be, difficult to ascertain contractual obligations and responsibilities.

More importantly, there appears to exist a certain apathy, and a lack of perseverance and diligence in pursuing the rights guaranteed the Federal Government under various contracts.

GSA's Inspector General provided a status report to the subcommittee which cited several problems as key factors in GSA's failure to carry out its responsibility to resolve the cafeteria issue, all of which could be summed up in two words: Poor management.

We know that rental budget for housing Federal employees will cost taxpayers an estimated $1 billion annually by 1985, and faced with that reality, neither poor management nor mismanagement of the lease rental program can be tolerated.

There are two issues on which the subcommittee has not received testimony from the individuals directly involved. One relates to the prenegotiation activity and the contents of solicitation No. 55, which reportedly contained on page 27 the section 10(a) provision for a lessor-provided cafeteria.

The second is equally important, since it relates to the so-called oral waiver of the cafeteria provision during the negotiation sessions.

Following our earlier hearings, I requested GSA's Inspector General to initiate an inspection and evaluation of the procedures which have been put in place by GSA to avoid a recurrence of this episode. The findings and recommendations will be presented to the subcommittee today, along with testimony from GSA lease management officials as to their current status.

The Chair would like to inquire whether the gentleman from Minnesota has an opening statement.

Mr. STANGELAND. Thank you.

Mr. Chairman, I understand that today we will be hearing about the prenegotiation phase of activity related to this lease, in a sense, the first chapter of the cafeteria story.

In theory, we should by now have a pretty good idea of what happened to cause the missing cafeteria. I am not so sure we do. What has come through loud and clear is that GSA had some serious management problems with its lease program and lost its right to the cafeteria.

But exactly what happened and why, in my view, has not become as clear despite the testimony we have heard. Perhaps some further clues will come out of today's discussion.

What I am especially concerned about now are the weaknesses and problems within the lease program revealed during these hearings. I look forward to hearing from Inspector General Sickon and Commissioner Haase about the changes in policies and procedures which will help to resolve some of these problems and sharpen up the lease program.

Thank you, Mr. Chairman.

Mr. LEVITAS. Thank you, Mr. Stangeland.

We will now begin the testimony this morning, and the first witness on the agenda is Mr. Ken Middleton, assistant news manager, WJLA, Channel 7, Washington, D.C.

Come forward and please raise your right hand.

[Witness sworn.]

TESTIMONY OF KEN MIDDLETON, ASSISTANT NEWS MANAGER, WJLA, CHANNEL 7, NEWSROOM

Mr. LEVITAS. Thank you very much, Mr. Middleton.

I understand that you are here today in order to provide the subcommittee an authentication of a certain portion of a film, a videotape that appeared on your station in December 1978, which relates in part to the matter under investigation by this subcommittee.

Mr. **MIDDLETON**. That is correct, sir.

Mr. **LEVITAS**. Do you have an opening statement to make?

Mr. **MIDDLETON**. No, sir.

Mr. **LEVITAS**. If not, do you have with you the videotape that the committee is interested in?

[Videotape shown to subcommittee.]

Mr. **LEVITAS**. Thank you.

Mr. Middleton, would you tell the subcommittee if that videotape that the subcommittee just saw on the television set over there was shown on your television station; and if so, on what date?

Mr. **MIDDLETON**. Yes, sir, it was shown on December 1, our 6 o'clock newscast, 1978.

Mr. **LEVITAS**. What is your position with Channel 7?

Mr. **MIDDLETON**. Assistant news director for programs. I am responsible for running the day-to-day operations in the news department.

Mr. **LEVITAS**. Whose voice was that that was heard as the reporter on that segment of videotape?

Mr. **MIDDLETON**. David Schoumacher.

Mr. **LEVITAS**. He is currently employed by your television station?

Mr. **MIDDLETON**. He is.

Mr. **LEVITAS**. I understand that counsel for the committee has agreed that, insofar as today is concerned, without waiving any rights of the committee, the subpena that we have issued for Mr. Schoumacher, we have agreed that his appearance today on this occasion not be required, since you are able to authenticate the tape, but I also understand that you have a statement from Mr. Schoumacher concerning the information that was displayed on the tape.

If you do, would you please present that to the subcommittee?

Mr. **MIDDLETON**. Would you like me to read that?

Dear Mr. Chairman: My name is David Schoumacher, and I have been the anchorman at WJLA-TV, Channel 7, from February 1976 to the present.

In connection with the hearing before the Subcommittee on Investigations and Oversight of the Public Works and Transportation Committee, I have been asked to review a 3½-minute videotape of a news story that I did and that aired on WJLA in December 1978.

That news story concerned a provision in a contract between Town Center Management Corp. and the General Services Administration relating to the Waterside Mall. Based upon my review of the videotape, I affirm that I appeared on screen in the news story and that I narrated the entire news story.

It is my understanding that the subcommittee is particularly interested in that portion of the news story in which I stated as follows: "Off camera he (Mr. Bresler) admitted he did have advance word a year early that the government was looking for a building but he couldn't remember who told him. He admitted he did agree in his contract to put a cafeteria in the building, but he couldn't remember the name of the official who told him orally he didn't have to."

I hereby verify that I made the above-quoted statement in the videotape, but that I now have no independent recollection of the story.

In addition, I hereby certify that this statement is true and accurate to the best of my knowledge.

Respectfully submitted, David Schoumacher.

Mr. **LEVITAS**. Thank you, Mr. Middleton.

Mr. **STANGELAND**. No questions.

Ms. **FERRARO**. I have no questions.

Mr. **Levitas**. Mr. Molinari.

Mr. **Molinari**. Mr. Middleton, do you know if there was any additional taping done that day? I know oftentimes you might do a 10-minute segment and edit it down to 3½ minutes. Do you know of your own knowledge whether there might be additional taping that was not shown on that segment before that might be in your files?

Mr. **Middleton**. I have no specific knowledge of that shooting, but just from experience, it is inevitable that there is more tape shot than airs.

Mr. **Molinari**. Would it be customary for your studio to maintain that in your files?

Mr. **Middleton**. It would not be.

Mr. **Molinari**. If we were to ask for that information today, the likelihood would be that it would not be available?

Mr. **Middleton**. I can assure you that it is not available.

Mr. **Molinari**. One other question, then. With a story that had as much human interest as this one has, was there any thought or action taken in a followup story based on the response you might have received from the public?

Mr. **Middleton**. I don't know. I was not employed by Channel 7 at that time, and neither was anybody currently in management at that news department, so whether there was a followup story, I don't know.

Mr. **Molinari**. Would you do the subcommittee a favor and check into that for us, to see if there might have been a followup story which might shed some light on this subject matter for us?

Mr. **Middleton**. I would be happy to.

[Subsequently the subcommittee was advised there was no followup story.]

Mr. **Levitas**. Thank you.

Following up on Mr. Molinari's request, if you would check the files, check with Mr. Schoumacher and whoever else you need to, and get back to the counsel of the subcommittee, as soon as possible this afternoon, if at all possible.

Now, the videotape that we saw, had you personally seen that videotape previously?

Mr. **Middleton**. Yes.

Mr. **Levitas**. And it came from the tape files at your television station?

Mr. **Middleton**. We supplied you a copy of what is in our files.

Mr. **Levitas**. Thank you very much.

The next witnesses will be Mr. Sickon and Mr. Haase.

Mr. Sickon, Mr. Haase and the individuals accompanying them, if you would come to the witness table.

Also, I would like to ask Mr. Mitchell of the General Accounting Office, and Mr. Trietsch of the Inspector General's Office to come forward.

I think we will wait for Mr. Haase to arrive. He is just upstairs. Mr. Haase?

Mr. **Haase**. Yes, sir.

Mr. **Levitas**. All of you gentlemen have previously been sworn in the course of these hearings.

Mr. **Haase**. I don't believe I have.

Mr. **Levitas**. Do you solemnly swear that the testimony you will give before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Haase**. I do.

TESTIMONY OF JOSEPH SICKON, INSPECTOR GENERAL, GENERAL SERVICES ADMINISTRATION, ACCOMPANIED BY CHARLES R. GILLUM, DEPUTY INSPECTOR GENERAL; JAMES F. CONYNGHAM, DIRECTOR, REAL PROPERTY AUDIT DIVISION; JOHN J. SOBOTA, JR., AUDITOR, REAL PROPERTY AUDIT DIVISION; DENNIS TRIETSCH, ATTORNEY, OFFICE OF THE INSPECTOR GENERAL; RICHARD A. HAASE, COMMISSIONER, PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION, ACCOMPANIED BY ARTHUR O. BARTON, ACTING ASSISTANT COMMISSIONER, PUBLIC BUILDINGS SERVICE; AND JAMES G. MITCHELL, ASSOCIATE DIRECTOR, PROCUREMENT, LOGISTICS AND READINESS DIVISION, GENERAL ACCOUNTING OFFICE

Mr. **Levitas**. Before we receive the opening statements, I wish to ask Mr. Trietsch—during the subcommittee hearings last year on December 3, I requested that an examination of the sworn testimony contained in the GSA Board of Contract Appeal's transcripts for possible comparison with other testimony and documentations to see if any evidence of perjury could be found.

I wonder if you could inform the subcommittee of your findings in that regard.

Mr. **Trietsch**. Yes, Mr. Chairman. I did examine carefully the available transcripts, and found no evidence of perjury. In our letter to you of March 8, 1982, we make a very cryptic statement of that fact, but essentially it involved a review of transcripts from the Board of Contract Appeals hearings, transcripts from those hearings, as well as some previous reports of investigation conducted by our Office of Investigations. Based on that review, we found no evidence of perjury.

Mr. **Levitas**. It is my understanding that the Board of Contract Appeals found that the provision in the contract that was the operative provision concerning the cafeteria appeared in the copy of the lease presented by the Environmental Protection Agency, GSA, but did not appear in the copy of the lease presented by the lessor, Mr. Bresler. Is that correct?

Mr. **Trietsch**. Yes, that is correct, Mr. Chairman, but just to add to that, if you will recall, the Board also concluded, based on its rather detailed examination, that Mr. Bresler was aware that the Government, the GSA specifically, had discussed the cafeteria requirement, and therefore, concluded that even though the documents apparently conflicted with respect to that paragraph, the fact remained that he knew that the Government wanted a cafeteria.

Mr. **Levitas**. Sure. I guess my point is this, and I wonder if you could comment on it from your examination of the transcript. Mr. Bresler swore that the copy of the lease that he submitted to the Board was the correct copy of the lease and that it did not contain a provision calling for the cafeteria to be provided by the lessor.

The Board found that the correct copy of the lease did contain a different page than that submitted by the Government, and it did require the lessor to provide a cafeteria.

Now, how do you explain Mr. Bresler's testimony if it is not perjury?

Mr. TRIETSCH. My understanding is that the GSA Board of Contract Appeals did conclude that the copy of the lease in the possession of Mr. Bresler did not contain the operative provision for the cafeteria, that the Government's copy of the lease did contain the cafeteria provision. Even though that was the case, the Board of Contract Appeals concluded that Mr. Bresler knew based on a lengthy period of negotiations, and this was after the lease was entered into, that a cafeteria was required.

In other words, the copy of the lease in Mr. Bresler's possession did not specifically contain a provision for a cafeteria, but rather for food facilities.

The Board concluded that based on their analysis, he knew that a cafeteria was required.

Mr. LEVITAS. I refer to page 15, just for the record, of the decision of the Board of Contract Appeals, and the first two full paragraphs on that page, which I will very quickly read for the record.

> More importantly, appellant's version of the solicitation appears to be an amalgamation of the two differing solicitations. Appellant's version is identical to the government's version with the exception of pages 27 and 28.
>
> The government's version of paragraph 10 is much longer than appellant's version of that paragraph and adds approximately one page to the solicitation. Appellant's version makes up for this one page by having its page 28 be a substantial duplicate of its page 29.
>
> Moreover, its page 28 has an imcomplete last sentence which is not completed elsewhere in the solicitation. Thus, it appears that appellant's version includes pages 27 and 28 which are incompatible with the remainder of the solicitation and are, therefore, not a part thereof.
>
> If there were any doubt, appellant's offer dated January 27, 1971, and amendment thereto dated February 12, 1971, make it clear that the solicitation appellant was responding to included the government's version of page 27 requiring a cafeteria.
>
> Both the original offer and appellant's amendment to that offer use the word 'cafeteria.' Appellant's version of the solicitation does not. The amendment to appellant's offer specifically refers to paragraph 10(a). Appellant's version of the solicitation contains no paragraph 10(a), only a paragraph 10.

I suggest to you, Mr. Trietsch, that there are heavy footprints of perjury in those two paragraphs. That is just my own conclusion.

At this point, we will hear the opening statement from Mr. Sickon.

Mr. SICKON. Thank you, Mr. Chairman, and members of the subcommittee.

I am pleased to provide some final comments on the Waterside Mall cafeteria issue, and also to advise you of the recent progress made by the Office of Inspector General in assisting in the establishment of a more effective and efficient leasing program for GSA.

The detailed examination by our office of the Waterside Mall cafeteria issue has helped us to better understand some of the problems facing GSA's leasing program.

In this regard, our responses to your questions on the Waterside Mall matter contained in our letters of March 8 and April 26 of this year, as well as in our discussion paper presented during our July 15 meeting with the subcommittee staff should assist you in reaching some conclusions about this matter, and about GSA's leasing program.

A further elaboration on the progress made during recent months by GSA management in improving the leasing program will be presented to you by the Public Buildings Service officials here today.

Historically, GSA's leasing program has been a major part of our audit program. Cyclical audits have been performed in the lease award and administration areas. After becoming Inspector General at GSA in August 1981, it became apparent to me that, although a significant amount of audit and inspection work had been performed, no consolidated effort had been undertaken to bring together findings in order to identify the systemic problems facing the leasing program.

With this in mind, an interdisciplinary Inspector General Task Force was formed to review the GSA leasing program. The objective of this task force was to identify common problems in the leasing program and to offer possible solutions for these problems to GSA management.

As a result of these efforts, in March 1982, an audit report was issued, entitled "An Approach to Improving GSA's Leasing Program."

As you know, this report analyzes over 40 audit and inspection reviews which identified some major management problems in the leasing area. The majority of the audits and inspections analyzed are represented by reports which were issued between May 1, 1980 and October 31, 1981.

Some of the major findings contained in our March report are: One, it took 366 days to fill a space request which, according to PBS objectives, should have been satisfied in 200 days; two, the extensive use of short-term leases increased the number of leases to such a degree as to preclude effective administration—87 percent of all leases awarded between 1977 and 1980 were for periods of 5 years or less; three, GSA did not know how much space each agency occupied as of May 1, 1980—the inventory of space occupied by each agency was about 51 percent; four, leases that expired were not replaced in a timely manner when occupancy was to continue; and, five, employee turnover among realty specialists averaged between 20 and 25 percent over the last 4 years.

The major causes for the problems identified in the leasing program were as follows:

First, GSA was reacting to individual agency space requests rather than evaluating the overall space needs of the Government. This reactive role absorbed many available resources. As a result, GSA had little or no time left for effective planning, updating space inventory records, awarding succeeding leases and negotiating new escalation rates.

Second, GSA had little or no control over many of the leasing functions. These functions included acquiring space in the central business areas, stringent fire safety and handicapped requirements, short-term commitments from agencies, and Economy Act limitations.

Third, GSA employee turnover was high in part because of the restrictive leasing requirements placed on realty specialists, and the absence of any comprehensive leasing program.

To improve the leasing program, and to assist management in resolving some of these problems, 14 recommendations were made. I would like to highlight a few of these recommendations.

These recommendations included the need for GSA to:

One, monitor the effectiveness of the leasing program in order to establish priorities for requests for space as a means for gaining better control of the leasing program;

Two, grant no further delegations of leasing authority to other agencies;

Three, develop, in cooperation with the Office of Management and Budget; legislative proposals that will affirm GSA's management role in the space area, permit the acquisition of space outside the central business area in appropriate instances, and permit GSA more flexibility in applying fire safety and handicapped requirements, and Economy Act limitations.

Over a year ago, the Administrator established a study group to review GSA's leasing program. This study group presented its findings last December. As a result of the study group's efforts, the Administrator established, in January 1982, a Leasing Improvement Task Force to address the issues raised by the study group. One of the problems identified by the study group was poor or inadequate documentation in lease files.

In our letter to you of April 26, 1982, we outlined several initiatives adopted by the Public Buildings Service resulting from this task force study. These include: One, the development of an easy-to-read, simplified handbook for leasing specialists; two, a standardized lease file to make leasing files uniform in each region; and, three, an improved training program for leasing specialists.

The Public Buildings Service officials will provide you with details as to their progress in implementing these initiatives and their current status.

Also, I would like to point out that in December 1981, the Administrator issued a leasing policy change which required that all leases over $200,000 be made subject to review by the Office of Inspector General.

In conjunction with this policy change, the Office of Inspector General developed a program to perform advisory reviews of leases prior to award. These reviews are designed to:

One, identify major deficiencies in the leasing process before award; two, determine that all major documentation has been properly prepared; and, three, identify any irregularities affecting the lease award.

These reviews do not constitute approval to make a lease award. Nor do these reviews constitute a waiver of future audits of the leasing action. The decision to take any corrective action rests solely with the contracting officer.

Our experience to date shows that in most instances, the contracting officer has corrected the identified deficiencies prior to making a lease award.

However, I wish to emphasize that these leases, as well as all GSA leases, remain subject to further review in our periodic audits of the leasing program.

Our advisory reviews of leases prior to award will continue. Further, we intend to continue our audit efforts in the entire leasing area. In this regard, we plan to initiate in the fourth quarter of this fiscal year a comprehensive audit of lease award and administration.

This audit will test the effectiveness of these new procedures and controls over the leasing process. The audit is estimated to require 700 staff days.

This concludes my prepared statement. If you have any questions, I will be pleased to address them.

Mr. LEVITAS. In your pre-award examination, how do you determine which leases to subject to that review?

Mr. SICKON. All leases over $200,000 are submitted to our regional audit people. In the program that I mentioned in my prepared statement, certain criteria are set forth for them to evaluate and to look for weaknesses in that particular lease.

Based on that direction, they make the judgment in the field. They are close to the various lessors and they know the local management best, so the decision is best made there.

Mr. LEVITAS. The Inspector General has made a series of recommendations for improving this program.

Are you now following up to determine whether or not these recommendations are being implemented, and if not, why not?

Mr. SICKON. Yes, we are, Mr. Chairman. We have an audit follow-up procedure. In GSA, there is an office which does that kind of review. However, in our normal process, our auditors go back and do a follow-up audit on the implementation of the audit recommendations on a test basis.

Since this area is so crucial and vulnerable, we certainly intend to follow up, and we have followed up. We will be following up on all of them until they are complete.

Mr. LEVITAS. Have you found any of the recommendations that have thus far not been implemented?

Mr. SICKON. Mr. Chairman, I would have to supply that for the record, because there are 14 of them, and they are in detail. Some probably have not been completed yet.

Mr. LEVITAS. I would appreciate it if you would furnish us a status report on what has been implemented and whether you feel the implementation from your point of view has been an adequate implementation of the recommendation, and not just a papering of the response. [The information is included in the GSA testimony later in these hearings, May 24, 1983.]

Mr. SICKON. We will do that, Mr. Chairman.

Mr. LEVITAS. Mr. Molinari.

Mr. MOLINARI. Can you tell me if there has been any followup audit of Bresler's activities since this incident was brought to light, any further leasing arrangements through GSA?

Mr. SICKON. Of Mr. Bresler?

Mr. MOLINARI. Mr. Bresler's corporations and their relationship with the Federal Government in terms of subsequent leasing.

Mr. **Sickon**. Not that I know of, Mr. Molinari. We have not singled out a particular building.

I would like to check my record. I would think that if he has very many buildings in Washington, there would have been a review or an audit or an inspection made of one or some of his leases.

Mr. **Molinari**. I have a recollection, and I could be wrong, that Bresler had substantial holdings in this area, and if I am not mistaken, had leased space in several buildings.

Is there anybody here from GSA who could confirm that Bresler, in fact, had other business leasing arrangements with the Federal Government?

Mr. **Haase**. Mr. Arthur Barton, who is the Assistant Commissioner for Space—I just asked him, and he is not aware of any, other than Waterside Mall.

We will check that for you right now, Congressman.

[The following letter was received from Mr. Sickon:]

GSA General Services Administration
Office of Inspector General
Washington, DC 20405

JAN 28 1983

REC'D [illegible] 4 1983

Honorable Elliott H. Levitas
Chairman
Subcommittee on Investigations and Oversight
Committee on Public Works and Transportation
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in response to two questions related to GSA leasing practices posed by you and Mr. Molinari during the course of hearings before the Subcommittee on December 14, 1982, and to comment on a matter which arose during these same hearings.

Specifically, Mr. Molinari asked whether the GSA leased from Mr. Charles Bresler any property in addition to the Waterside Mall complex. Based on a careful review of Office of Inspector General indices and Public Buildings Service data provided to us, our Office of Investigations has ascertained that GSA does not at present lease any other property from Mr. Bresler, or any firm in which he has an interest. Further, we have reviewed a list of prior leases dating back to 1970 with negative results. Therefore, we have concluded that the Waterside Mall Complex leased from Town Center Management Corporation is the only property leased by GSA in which Mr. Bresler has an interest.

You also requested a status report on the implementation by the Public Buildings Service of the audit recommendations contained in our March 31, 1982, Audit Report entitled, "An Approach to Improving GSA's Leasing Program." The enclosed summary prepared by our Office of Audits provides you with this current status report. If you wish further explanation of this summary, please let me know.

I also wish to bring to your attention a matter which relates to your continued concern about the accuracy of prior testimony regarding the contents of Solicitation 55.

We noted that during the recent testimony provided by Mrs. Doris Frankenfield before the Subcommittee, she stated that she did not examine each page of Solication 55 prior to transmitting it to Mr. Bresler in 1971. This statement is inconsistent with prior testimony provided by Mrs. Frankenfield several years ago before the GSA Board of Contract Appeals. While inconsistent, we are of the opinion that since this involves a matter which occurred over twelve years ago, no further examination of Mrs. Frankenfield would prove useful.

I hope that this response helps you in your continuing review of GSA leasing practices.

If I can assist you further, please do not hesitate to contact me.

Sincerely,

Joseph A. Sickon

JOSEPH A. SICKON
Inspector General

Enclosure

Mr. Molinari. There is a case pending now, so I won't go into too much detail. Isn't it accurate to say that Mr. Bresler is being looked at, at least with respect to one other instance, at the present time by your office?

Mr. Sickon. Not to my knowledge.

Mr. Molinari. Anybody here from your Litigation Bureau that could shed some light on that subject for us?

Mr. Trietsch. Mr. Molinari, what you may be referring to is a pending case before the GSA Contract Board of Appeals, in which Town Center is a party.

This involves the lease dealing with Waterside Mall or perhaps extensions of that lease.

Mr. Molinari. I checked with the chairman, and his recollection is similar to mine in that Bresler had other holdings and had other leasings. Frankly, I am kind of surprised that we are not able to get a more definitive response as to whether we have checked into that aspect.

After all, there is a serious question that has been raised as to the propriety of the actions of Mr. Bresler and it would have been incumbent upon your office to at least use that as a starting point, to see if this is a pattern, and if he has done this in other matters.

It is difficult for me to imagine that that would not have been the subject of inquiry by your office.

Mr. Sickon. To my knowledge, there has been no inquiries of Mr. Bresler since August 1981.

Mr. Molinari. Prior to August 1981?

Mr. Sickon. I don't know. I would like to review the record and submit that answer for you. To my knowledge, there aren't any.

Mr. Molinari. Let's be sure that we understand what it is that I would like to be submitted for the record. That is any and all leasing arrangements that have been entered into between Mr. Bresler or any corporation in which he was a major officer, director, stockholder for that matter, so that this subcommittee could make a comparison as to whether unusual events occur in other leasing arrangements with the same individual.

Mr. SICKON. What time period?

Mr. MOLINARI. Well, what is the date of the original lease—I would say go back to about 1970, on. I would be very interested in seeing that.

There is a statement on page 2 that the large number of short-term leases, precludes effective administration. There, again, I can't understand the rationale behind that. Why is it difficult for your office or GSA to administer short-term leases?

Is it a lack of personnel? Five-year leases are not unusual in the commercial leasing field. I find that answer somewhat puzzling.

Mr. SICKON. Our reviews showed with the annual escalation of those leases and the renewal of the leases, as the term shortened, the workload became congested in that period, and it was a function of really two things.

One is certainly people, the numbers of people, and the quality of those people. With the turnover that was being experienced, it was very difficult to keep up with, in an adequate way, all the things that were necessary to negotiate the lease escalations and the renewal.

Mr. MOLINARI. Let me ask you a question. Do you use computer references to keep track of your leases, and are not the effective dates put into the computer, so as you get into your next month, you can look and see what leases are coming up for renewal?

Mr. SICKON. We don't. We audit. GSA does, yes. Yes, they do.

Mr. MOLINARI. Well then, what is your opinion as to why they have not been able to more properly administer short-term leases? It shouldn't be much more difficult, outside of adequate personnel, to administer a 5- or 10-year lease, instead of a 20-year lease.

Mr. SICKON. You have to do it often, and it is a function of the people that are there to do it, and the size of lease, and how long it takes to negotiate a particular lease escalation or a new lease.

Mr. MOLINARI. In effect, what I am hearing, I think, is that the Federal Government, with its resources, lacks the ability to do what many large real estate holding corporations are doing throughout this country.

They have the same problem, only they are on the other side. We have, particularly where I come from, New York City, we have large firms that lease out space in thousands of cases. They don't have any difficulty in administering those leases and finding out when the termination dates are and when to review options and things of that nature. So I can't understand why GSA, with its resources, is in such a difficult position.

Could anybody explain that to me?

Mr. HAASE. I would like to explain that to you, Congressman. The histories of the computer technology that GSA has, and has had for the last 10 years, is a large A-frame Univac 1108.

It is not a management-type system, a data dump-type system, so the leasing agents would just put the information in, and it, over the years, has become overloaded, and it has not been purged to pick out the proper equipment, and in the last couple of years, we have recognized that, so what we have done to correct that type of situation, to go more to the management system of these leases, is to fast-track a computer system, which we are right now testing in a region, which will put in the field a microcomputer which will give a realty specialist hands-on management of every lease that he writes that will be also brought back to the regional office, and brought back to central at any time.

It is a distributive type of system, using microcomputers, which the private sector does, and getting away from this one A-frame-type computer.

Mr. MOLINARI. One other thing, on page 4, the top paragraph, GSA employee turnover was high, in part, because of the restrictive leasing requirements placed on realty specialists and the absence of any comprehensive leasing program. Would you mind explaining more fully what you mean by that?

Mr. SICKON. It became a frustrating job trying to meet requirements that at times conflicted, and at the same time trying to, within a region, not know what the overall leasing plan was for the Government, and though, with the lack of the overall plan, and the fact of the conflicts that existed, it became a very frustrating job, and a lot of the people felt they were able to make more money in the private sector and were leaving Government.

Mr. MOLINARI. I can understand that, but we are talking about restrictive leasing requirements as a reason for turnover, not salary. Why restrictive? Why would that problem cause an employee to leave his job?

Mr. SICKON. Well, if you were asked with getting space within a very confined area, and if you were able to take that restriction off and make the area larger, it would be much easier for you to fill that space request, that need, and those were the kinds of things that were inhibiting and detracted from the ability of a person who was trying to do a service in providing that service in the way he felt to be the most productive way to do it.

Mr. MOLINARI. In effect, we are talking about a morale problem?

Mr. SICKON. Yes, sir.

Mr. MOLINARI. One of the key elements that I am coming away with from your statement is, one of the reasons why GSA has had a problem is because of inadequate personnel. Is that an accurate statement?

Mr. SICKON. Define inadequate.

Mr. MOLINARI. You don't have enough people to do the job.

Mr. SICKON. It is a function of numbers. It is also a function of training. I wouldn't want to agree that it was totally numbers, but certainly numbers do enter into it.

Mr. MOLINARI. Has any official request been made by the agency for an increase in personnel so they can adequately do what they have to do?

Mr. HAASE. We put 44 more leasing specialists, authorization for 44 more leasing specialists in another field. We recognize that utilization, space reductions are big dollar-saving items, and we are interested in fast-tracking this.

Mr. MOLINARI. One last question. The case of this cafeteria, we have two page 27s. This is the crux of the whole matter, I guess. Now that we have gone through your review processes, I have not heard anybody say yet that one of the recommendations, and maybe this has been picked up, but one recommendation is simply something that everybody in the world seems to do, and that is to initial or identify each and every page.

I know I did it in practice, and had a small circular stamp that was put on each page so each page would be initialed. Then you wouldn't have these kinds of crazy situations. Anybody come up with a recommendation like that?

Mr. SICKON. That was implemented subsequent to this.

Mr. MOLINARI. Great, glad to hear it.

Mr. LEVITAS. Ms. Ferraro.

Ms. FERRARO. In your testimony, on page 6, you indicated that the Office of the Inspector General has developed a program to use advisory reviews of leases prior to award.

You say the reviews are designed to identify major deficiencies in the leasing process before an award. Do you go into whether or not there has been competitive bidding prior to the awarding or the drawing up of the lease?

Mr. SICKON. Yes.

Ms. FERRARO. In this particular case, there was none; is that correct?

Mr. TRIETSCH. You mean the Waterside Mall?

Ms. FERRARO. Yes.

Mr. TRIETSCH. There was a solicitation, and I believe two responses, Town Center Management being the lesser in dollar amount.

Ms. FERRARO. Was there anything besides the dollar amount being looked at? Do you know what factors were used to determine the awarding of the lease to Mr. Bresler?

Mr. TRIETSCH. Other than the dollar amount, no, and the fact, of course, of location.

Now, that lease, if you recall, was awarded in 1971. That was 11 years ago. I suspect now, and maybe Mr. Haase can address this, the area of geographical location and the issue of dollar amount would perhaps figure into a more careful analysis of that.

Mr. HAASE. Congresswoman, there is a criteria, that price is a driving force, but there are many other items that figure into the responsiveness of a bid, the programmatic needs of the agency, the economic needs of the agency, and obviously, we are not interested in, just because of the low dollar amount, somebody 300 miles from Washington or something like that.

Ms. FERRARO. So that that determination on the competitive bids is made by the individual who is——

Mr. HAASE. Correct, the contracting officer.

Ms. FERRARO. That is subject to review by your office.

Mr. HAASE. Correct.

Ms. FERRARO. Does the A-76 circular apply in such instances as this, where services are going to be performed in the cafeteria of the nature supposedly to be provided by Mr. Bresler according to one lease and not the other?

Mr. HAASE. No.

Ms. FERRARO. All right. I have no further questions.

Thank you, Mr. Chairman.

Mr. LEVITAS. Thank you.

Your statement will be made part of the record, Mr. Haase.
[The statement of Mr. Haase follows:]

STATEMENT OF RICHARD O. HAASE, COMMISSIONER, PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION

Mr. Chairman:

I am Richard O. Haase, Commissioner, of the Public Buildings Service of the General Services Administration appearing before you on behalf of the Administrator of GSA, Mr. Jerry Carmen, to discuss the measures we have taken to ensure enforcement of lease contract requirements and to strengthen and improve our leasing program as a whole.

Many of the initiatives that I will discuss have been directed toward the avoidance of the type of problem experienced in the Waterside Mall cafeteria case.

When Mr. Carmen became Administrator in June of 1981, he found that the leasing program was not being effectively managed. The leasing process was cumbersome and slow. Many customer agencies were highly critical of the level of service they were receiving. There was a large backlog of cases on hand, including 144 expired leases in holdover status.

Mr. Carmen created a Leasing Improvement Task Force to identify major problem areas and to develop and implement measures necessary to eliminate those problems.

Increased management involvement and oversight has enabled us to set a shorter goal for the time we take to deliver leased space. The FY 82 trend indicates a steady improvement in delivery time.

Regional officials were instructed to concerntrate on eliminating holdover leases. In regions where the problem was most severe, task forces were set up to deal specifically with holdover cases. As a result, we were able to effect a 77% reduction in the number of holdover leases. There are now only 33 cases outstanding nationwide. We have resolved the backlog of cases for the Social Security Administration, a major customer agency. Since October of 1981, 718 leases actions have been completed to house SSA activities.

We have developed and are using an automated solicitation for offers for leased space to ensure that our office space requirements are uniform throughout the regions. The solicitation does not include a cafeteria requirement, since we have found that in most instances private-sector eating facilities are available within close proximity of the proposed space to be leased. We have directed that requests for inclusion of such a requirement be submitted to my office for review and approval on a case-by-case basis. Should such a request be approved, it would represent a special requirement and would be subject to careful scrutiny and frequent inspection throughout the alteration process.

Contract assurance and clearance controls have been strengthened to make sure that contractual obligations are being fulfilled. Most leases are reviewed and approved by regional contract clearance activities prior to award. Additionally, major lease contracts are subject to clearance at both regional and Central Office levels. We require that preaward audits of lease operating costs be requested whenever they are estimated to be over $100,000 per annum. The audit and inspection functions of the Office of the Inspector General are also available to review other selected lease projects.

Our leasing handbook was extensively revised and updated to clarify and consolidate the many policies, procedures, regulations and statutes made applicable to the leasing program in recent years.

In addition, we have recently published a companion to the handbook which provides a simple, step-by-step guide to the leasing process. It is designed to be especially useful to new and relatively inexperienced personnel.

We are currently developing procedures to provide for a greater involvement by our Construction Management personnel in lease construction and alterations. Their experience and expertise will enable us to better evaluate potential lessor performance and compliance with Government requirements.

In response to a recent incident in which a lease renewal option was missed by one of our regional offices, two officials with primary program responsibility were dismissed from the Government, and steps have been taken to prevent the recurrence of such costly errors, including a complete review of every lease contract and all computer entries to assure data conformity and accuracy. Auditors subsequently checked the accuracy of the review in each region to verify the quality of that effort.

We are developing a new series of automated reports to assist regional and Central Office managers in supervising their programs. The reports will be made available on a monthly basis and will provide support in key areas such as workload scheduling and monitoring performance. They will also serve to supplement existing lease expiration and renewal option early warning mechanisms. We instituted a Space Action Tracking System in November of 1981, which was run weekly through November of 1982. At that time the frequency was changed to bi-weekly. This program lists all pending space requests and lease projects along with the current schedule for completion, and represents the most detailed tool used for monitoring the status of the space management program. Additional reports on scheduling and actual performance are also used by the Central Office and regional staff to monitor specific aspects of the program.

GSA is currently initiating a pilot project in the Central Office and the Forth Worth regional office which will greatly increase the scheduling and performance measurement capabilities through the use of current computer technology.

In conjunction with our efforts to streamline the leasing process, one of the major objectives of the Administrator is directed to the reduction of space by all agencies. Mr. Carmen has written department and agency heads asking them to review outstanding lease requests in view of present budget constraints and to withdraw unnecessary requests.

I believe that these initiatives will continue to significantly improve and strengthen the leasing program, permitting us to better serve our customer agencies and in the end, the interests of the taxpayer as well.

Thank you. I will now answer any questions which you may wish to ask.

Waterside Mall
4th & M Streets, S.W.
Washington, DC

Lease/Term	Net Usable Square Feet	Annual Rent/ Rate per S.F.	Appraised FRV
1. LDC-05788 9/14/72- 9/13/92	878,294	$4,353,134.62* ($4.96)	$4,036,238.56
2. LDC-00039 9/22/80- 9/21/85	15,000	$ 171,024.80 ($11.40)	$ 172,411.00
3. LDC-10070 2/10/82- 2/9/87	55,514	$ 799,999,82 ($14.44)	$ 877,438.48
TOTALS:	948,708	$5,324,159.34 ($5.61)	

Tenant: Environmental Protection Agency

Lessor: 1. Town Center Mgmt. Co. Inc.

2.&3. S.E.W. Investors
c/o Town Center Mgmt. Co. Inc.

* Plus electricity for portions of the space

Mr. **Levitas**. The situation about the failure of the GSA to properly exercise a lease renewal option in one of your regional offices, and you get into that in your statement. My two questions are these:

What was the total cost to the Government as far as you can determine of the failure for that lease option to be exercised?

Mr. **Haase**. Well, it would be the difference between $10 a square foot for approximately 180,000 square feet over a period of 10 years and the difference of what we could have gotten it for after we missed the renewal option.

Mr. **Levitas**. Was the information available? Was it in a computer? How did it happen?

Mr. **Haase**. It is quite a bit of a real mixup and a horror story, because it involved this computer; this Univac computer, the information was put in, was actually put in at the first time the renewal was to come up, which I believe was 1977, and at that particular time, the same situation occurred, identical to the 1980, or 1983 situation.

It was not correct at that time. The only reason the owner allowed us to continue on or went back and said, "Well, I recognize that you missed the option, but I will hold up to the option agreement," is because the market rent and the contract rent were pretty close together.

Obviously, that situation does not occur now, or it is not in evidence now in San Francisco, and he has taken a different stand.

The situation—the error should have been corrected at that particular time. The people involved in that error were disciplined and have since been removed from the San Francisco office.

It is my feeling that errors of this type should be dealt with with disciplinary action, and both you and I know how difficult it is to remove people that work for the Government, but they are responsible for this action, and this action has cost the Government a lot of money, and there is really no excuse for it.

Mr. **Levitas**. One of the conclusions that I have come to in this particular Waterside Mall matter, leaving aside Mr. Bresler for the moment, one of the major problems—in fact, the Board of Contract Appeals says so—is that GSA just did not aggressively pursue this matter, and by waiting so long, they created a de facto waiver, and this, again, is costing the taxpayers, or would potentially cost the taxpayers $600,000.

Do you feel you have a better follow-up system now where someone knows that a problem of this sort is sitting out there and is not just lying back and letting it slip through the cracks?

That is what happened in this case. Anybody in private industry who would have been responsible for seeing a right of this value go down the drain because they didn't pursue it would be out on his ear the next morning. And I want to know what is being done to make sure that things of this sort are pursued vigorously for the taxpayers.

Mr. **Haase**. Disciplinary action is being done, and that doesn't recover the loss of money that the Government incurs. I would hope that it would send a signal out that we are not going to tolerate situations of this nature.

In addition, you don't solve all of these problems that come up after they have occurred, and I am trying to prevent these actions from happening at all.

I think it is imperative that every Assistant Regional Administrator knows the consequences of what is going to happen. He has to manage this inventory of space leases. If the computer isn't sufficient to give us the information, we don't deal with that many options, that we can't get into a manual-type tracking system until we get this computer on line.

I won't stand for excuses, "Well, the computer fouled up." They have to go to a tickler system like they did in the old days.

Mr. LEVITAS. Where there are rights which GSA has, to have a cafeteria built, or to have some other benefit provided as required in the lease document, is there an inventory maintained of what those rights are, and the status of their being fulfilled by the lessor?

Mr. HAASE. Yes, about 4 years ago an Office of Contract Assurance was instigated at GSA. That Office of Contract Assurance not only monitors the cafeteria, so to speak, but also has the duplicate copy of the lease file.

As you know, in the Waterside, there was some indication that the file couldn't be found at one particular time. That really, I want to say, never could happen again, but we are taking every precaution that it doesn't happen again by this Office of Contract Assurance.

Their duty is to look at every leasing action over a threshold. In the region, it is over 5,000 feet. They monitor whether the cafeteria is going in according to the lease agreement, and whether the lessor is performing its function as described in the lease, and so on.

Mr. LEVITAS. All right, thank you very much.

Mr. Molinari.

Mr. MOLINARI. One further area that I would like to just go over with you gentlemen.

We had before this subcommittee the attorney who handled this matter for GSA, and in response to questioning that I presented that day, he answered that a determination was made as a result of the litigation, that GSA was entitled to the cafeteria, but that due to reaction over the passage of time, they had lost that right. Is that understanding correct?

Mr. HAASE. That may be a legal interpretation. I took over this job years ago, and if that happened now, it certainly wouldn't be my opinion.

That is certainly a legal interpretation.

Mr. MOLINARI. Well, is there anybody here that can tell us actually what the finding was? It was my understanding that the attorney at least succeeded in establishing the fact that they were entitled to the cafeteria, but because they had not exercised their right by enforcement, they lost that right.

Mr. TRIETSCH. I believe you are referring to the discussions at the last session with Mr. Peter Ting, who is the GSA attorney who represented GSA before the GSA Board of Contract Appeals.

I believe it was his position that indeed GSA may have been entitled to the cafeteria, but my recollection is that since he represented the Government, he took that position, but maybe personally he was not convinced that that was the case.

I believe maybe it was in response to a question the chairman asked a year ago December, with respect to whether or not he should appeal the decision, and that is perhaps where your interpretation derives from.

Mr. **MOLINARI**. That is precisely the question. I had asked that question myself as to why there was no appeal. My recollection of his answer was that he reviewed the file and made a lawyer's decision that he could not succeed, and therefore, he, on behalf of the Government, decided not to exercise the right to appeal, or ask for reconsideration.

What surprised me, and I mention this because we have you gentlemen here today, and we are reviewing procedures for the future, was that this was a unilateral decision on the part of counsel.

I asked him if he talked to his superiors about it, and got their consent to forego any right of appeal, and he said, no, he didn't. I said, "You mean you made the decision on your own in such a serious matter?" And he said, "Yes, I did."

It would seem to me that a matter of such great significance, and let's face it, the most difficult part was establishing that the Government was entitled to a cafeteria, he succeeded on that score, and it was just a question, a legal question, as to whether the Government lost its right to the cafeteria after the passage of time.

I felt that prudence would dictate that before he made that decision he should have consulted with some senior counsel of GSA, and I was astounded to find out that he had not. This was a decision on his own, and he hadn't been in office too long, as I recall.

I would like to get somebody's comment on this, as long as we are going to come up with review procedures. I certainly think it was an area that a prudent lawyer would have gone to some senior counsel and said, "Hey, look, I don't think we should proceed with this." Then, after reviewing the merits of the case, somebody could either order him to go up on appeal or say "You are right, we concur."

Mr. **HAASE**. I can tell you how it would go today, and that is, if a recommendation came out of counsel's office like that it would go directly to the Administrator, and the Administrator would involve the IG and the Administrator would make a decision, and I know him well enough, that he would pursue it vigorously.

Mr. **MOLINARI**. The appeal?

Mr. **HAASE**. The appeal. I believe the change has been made since the time I am in.

I know that we have had, not circumstances similar to it, but circumstances that sort of skirt things like this, that he has attacked vigorously from the office and the passage of time is no excuse in his mind.

Mr. **MOLINARI**. It wasn't so long ago that he testified before this subcommittee, and there was no reference made to this procedure. Is this something that has just been implemented in recent months?

Mr. **HAASE**. It is my presence over there in the year, and knowing how he reacts to different situations like this, that I feel in my opinion that if something like this happened today, it would be pursued vigorously, no matter when it happened.

Mr. **Molinari**. OK, now, you say it is your opinion. Is it a matter of absolute written policy or just a judgment on your part?

Mr. **Haase**. It is a judgment on my part.

Mr. **Levitas**. Ms. Ferraro?

Ms. **Ferraro**. I have no questions.

Mr. **Levitas**. Thank you, gentlemen.

I would like Mr. Mitchell and Mr. Trietsch to remain where they are.

Mr. Trietsch, one other item. You recall that at the hearing last December on this matter, Mr. Borwick informed the subcommittee that a letter was being prepared to request the assistance of the U.S. Department of Justice to assist GSA in determining the feasibility of an action at large, a suit in equity against Town Center Management, the lessor of the Waterside Mall, to enforce the Federal Government's right to a cafeteria as called for in the lease agreement.

Would you identify the response of the Justice Department in that regard?

Mr. **Trietsch**. Yes, Mr. Chairman; I was not directly involved in that because it was a matter that was initiated by the GSA General Counsel in the form of a written request to the Department of Justice for a review of various Waterside materials and a determination as to whether or not there was any feasibility with respect to a civil suit.

The response in writing from the Department of Justice was that, based on their review of the materials, civil recovery was not feasible.

Mr. **Levitas**. Without objection, a copy of a letter to a Ms. Allie Latimer, General Counsel, GSA, dated December 10, or received December 10, 1981 from a Stuart E. Schiffer, Deputy Assistant Attorney General, will be made part of the record.

[The letter follows:]

for JP. O'Hara

U.S. Department of Justice

Civil Division

Office of the Assistant Attorney General

Washington, D.C. 20530

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GENERAL SERVICES
ADMINISTRATION

10 DEC 1981

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OFFICE OF
GENERAL COUNSEL-L

Ms. Allie B. Latimer
General Counsel
General Services Administration
18th & F Streets, N.W.
Washington, D.C. 20405

Re: Appeal of Town Center Management Corporation,
GSBCA No. 4574-R

Dear Ms. Latimer:

This is in response to your letter of December 4, 1981, requesting our advice on the feasability of an action at law or suit in equity against Town Center Management Corporation (Town Center). The purpose of such a suit would be to enforce the Government's right to a cafeteria in the Waterside Mall complex under its lease with Town Center, despite the ruling by the General Services Administration Board of Contract Appeals that the Government has waived that right.

In our opinion, any action at law or in equity would be futile and thus should not be pursued. In this we agree with the opinion of Robert M. Perry, General Counsel of the tenant agency, the Environmental Protection Agency, for the reasons expressed in his memorandum of December 2, 1981, a copy of which you enclosed with your letter.

The success of any suit against Town Center pertaining to its failure to provide a cafeteria at the Waterside Mall complex would depend upon overturning the Board's determination that the Government "waived" its right to such a facility. As you noted, S & E Contractors, Inc. v. United States, 406 U.S. 1 (1972), forecloses a direct appeal of the GSBCA decision.

The rationale of the S & E Contractors decision and its progeny, especially Fischbach and Moore International Corp. v. United States, ___ Ct. Cl. ___, 617 F.2d 223 (1980), is that a decision by a board of contract appeals empowered to speak with finality for the agency constitutes, in effect, a unilateral settlement offer which ends the dispute if accepted by the contractor. The GSBCA was acting within its authority in deciding the waiver issue and we are not aware of any regulation such as 41 C.F.R. § 12.1-318.53(a), applicable to the Department of Transportation, which would limit the finality of GSBCA decisions. There is, consequently, no basis whatever for attacking in a collateral action the "settlement" effected by the GSBCA decision.

I regret that we cannot be at all encouraging in your effort to enforce contract rights to which the Government apparently was entitled at one time. If we can provide you with any other assistance, however, please let me know.

Very truly yours,

STUART E. SCHIFFER
Deputy Assistant Attorney General

Mr. **Levitas**. It outlines the information you just provided the subcommittee.

Let me just say this before I call the next witness. We just finished a series of elections around the country, and I can tell you one of the things the American people are very angry about is the fact that millions and millions of dollars of their money are being wasted. They have a right to expect the stewards to safeguard that money and this is a classic example where a minimum of $600,000—and we have information that it is probably as much as $1.8 million—has just gone down the drain. People are very angry about this sort of thing happening.

That is the type of waste that we hear so much about, and that gets the public, as well as the Congress, very riled up.

Ms. Ferraro.

Ms. **Ferraro**. I wanted to ask Mr. Trietsch something. Competitive bidding seems to me to be really the direction that the Federal Government must go in order to preclude something like this from occurring.

You had indicated there was competitive bidding in this case. Could you describe for me that competitive bidding, since what occurred on that, it was said on that tape that Mr. Bresler knew about the search for space a year ahead of time.

How is that? What procedure is currently used by GSA with reference to leasing, and what was specifically done in that instance?

Mr. **Trietsch**. I am not certain that I can really address that or have the competence to address that. I suspect one of the representatives from the Public Buildings Service, Mr. Barton or Mr. Haase, might be able to specifically address that.

That was not one of the major issues that we looked at. Indeed, we had heard previously that Mr. Bresler may have known that the Government was seeking to lease a particular property prior to the award, but we did not really explore that issue.

That would have occurred, of course, in approximately 1969 or 1970.

Ms. **Ferraro**. There is no way you could determine how L'Enfant Plaza got involved at this particular point of time?

Mr. **Trietsch**. The reason L'Enfant Plaza got involved is that they were one of the offerers with respect to a solicitation submitted by the Government. They submitted an offer, as did Town Center Management.

Ms. **Ferraro**. Do you know if they were reacting to a public announcement, or reacting to a solicitation by the Government?

Mr. **Trietsch**. My understanding is that L'Enfant Plaza was reacting specifically to the solicitation by the government and the award factors in the solicitation.

Ms. **Ferraro**. Was the solicitation done in the normal course of business?

Mr. **Trietsch**. Yes.

Ms. **Ferraro**. Do you go specifically to places in the area to seek space; or how is that done?

Mr. **Trietsch**. In essence, that is exactly how it is done. I think for a more detailed response to that, however, Mr. Barton, might be able to address that.

Ms. **Ferraro**. Maybe Mr. Mitchell.

Mr. **Mitchell**. I am not familiar with how they are doing it now. I think, in this particular case, L'Enfant Plaza was actually approached by GSA to get an offer. I think the solicitation went out to L'Enfant Plaza, as well as to Town Center.

Ms. **Ferraro**. Any other places within the area?

Mr. **Mitchell**. Southwest Washington was the area they were looking for, and I don't believe there were any other potential locations that had the size space that GSA was looking for at the time.

I would have to go back and look a little to see, but as I remember, they wanted a tremendous amount of space something like 500,000 square feet.

Mr. **Trietsch**. The initial solicitation requested 400,000 square feet. It was a total of 503,800 square feet. That was the result of an amendment subsequently submitted by Mr. Bresler.

Mr. **Levitas**. Mr. Barton, you have been previously sworn in these proceedings.

Mr. **Barton**. I can take you back as far as the time when I was the contracting officer in Washington, D.C., which was late in 1971, as I recall, and early 1972. At that time, we were in the processes of leasing large blocks of space; namely, from people who were building buildings.

There was a constant interchange of information between us and the developers in Washington, D.C., who would come to our office and ask us, what is GSA planning to lease in the near future, and in those days, we would tell them, we have no requirement for so many thousands of square feet.

L'Enfant Plaza was in its development stage and did have a large amount of vacant space, which they were having extreme difficulty in leasing, so they were constantly trying to find out what the Government's need for space was.

The normal course of events was in those days to advertise in the local newspapers a survey, a space requirement, and then issue a solicitation of offers to those who we thought could meet the requirement.

That was true when I was there, and it is a process that has still continued to this day in GSA.

Ms. **Ferraro**. Was that process reviewed when you people were reviewing the entire contract procedure?

Mr. **Trietsch**. I did not examine that specific issue.

Ms. **Ferraro**. I have a real concern about competitive biddings, because I really think if that is watched very, very carefully, that that is where all the basis for all these contracts exists. Sometimes it is inadequacy on the part of the person who is getting the bid or getting the lease, and I would not impugn that to the person who did effect this lease, but certainly there are occasions—at least in New York City, and I would assume it applies to Washington as well—where certain leases can be given where benefits can be received by the person awarding the lease.

A Federal employee should be held responsible as well, especially in matters where it involves this much money.

Mr. **Levitas**. Thank you. At this point, I would like to call to the witness table Doris Frankenfield. Ms. Frankenfield, please raise your right hand.

[Witness sworn.]

Ms. **Frankenfield**. I do.

TESTIMONY OF DORIS FRANKENFIELD, FORMER DEPUTY DIRECTOR OF SPACE MANAGEMENT, GENERAL SERVICES ADMINISTRATION

Mr. **Levitas**. Would you begin by explaining to the subcommittee what your position was with the General Services Administration in early 1971, at which time GSA prepared solicitation No. 55, designed to acquire lease space in which to house the Environmental Protection Agency in Southwest Washington, and describe precisely what you did as well as what your official position was.

What was your role? How long had you been doing it? Who did you work for, and how was it actually administered?

Ms. **Frankenfield**. Well, I was a realty officer. I cannot remember the exact supervisor, because there was a constant changeover there. I believe that Matt Long was the Director of the Space Management Division at that time.

My role was to prepare solicitations that would go out on the market.

Mr. **Levitas**. With you working for the regional office, or with you working for the GSA headquarters?

Ms. **Frankenfield**. Well, at that time, I believe they called it the Office of—it might have been Office of Space Management. I don't know whether we reported to the region then or not, because at one time we were region, and then it became a separate entity.

Mr. **Levitas**. Did you participate in the preparation of this solicitation No. 55?

Ms. **Frankenfield**. Yes, I prepared it.

Mr. **Levitas**. Who did you get your information from as to what would be specified in the solicitation for offers?

Ms. **Frankenfield**. We sort of had a standard solicitation, and then we would change things in it like the location and different requirements, special requirements that an agency would have, you know, as to location, type of space, any sort of special requirements, but the solicitation itself was sort of a standard type.

Mr. **Levitas**. Now, if there were special requirements, where would that information come to?

Ms. **Frankenfield**. They would come to GSA from the agency. The agency would specify their particular requirements.

Mr. **Levitas**. In the case of this solicitation No. 55, do you recall how many solicitations were distributed?

Ms. **Frankenfield**. To my knowledge, two were distributed to L'Enfant Plaza and Bresler, because they were the only two people that had space of that size in Southwest, because one of the requirements of the agency was the space was to be in Southwest.

Mr. **Levitas**. Was the same document submitted to both of those entities, L'Enfant Plaza and Town Center?

Ms. **Frankenfield**. Yes.

Mr. **Levitas**. As I gather from the testimony we have had before, the early stages of preparing the solicitation, it is sort of a cut-and-paste operation, and then it is submitted to a printer?

Ms. **Frankenfield**. Right.

Mr. **Levitas**. When those copies come back from the printer, do you examine the document that is finally returned?

Ms. **Frankenfield**. You don't examine them page-by-page. At least, I didn't.

Mr. **Levitas**. Do you recall any instructions about including in this particular solicitation No. 55 a requirement for the lessor to provide a cafeteria in the building?

Ms. **Frankenfield**. Yes, there was a requirement.

Mr. **Levitas**. Did you ever have any conversation with Mr. Bresler or anyone representing Mr. Bresler about this requirement?

Ms. **Frankenfield**. Not myself personally. I was in on the negotiations in Mr. Shipp's office, where we talked about a cafeteria.

Mr. **Levitas**. When you say you were in Mr. Shipp's office, Loy Shipp?

Ms. **Frankenfield**. Right.

Mr. **Levitas**. This was after the solicitation was provided to Mr. Bresler?

Ms. **Frankenfield**. Correct.

Mr. **Levitas**. Subsequently, there were negotiations with Mr. Bresler concerning that solicitation?

Ms. **Frankenfield**. That is correct.

Mr. **Levitas**. It was on this occasion that you recall discussions about the cafeteria requirement, is that correct?

Ms. **Frankenfield**. That is correct.

Mr. **Levitas**. To the best of your recollection, what was the nature of those discussions?

Ms. **Frankenfield**. The nature of the discussions was that there would be a cafeteria provided in the building, because of the location of the space and the number of people, and it was very definitely stated that there would be a requirement for a cafeteria.

Mr. **Levitas**. Did Mr. Bresler object or complain or in any way say that that wouldn't be done?

Ms. **Frankenfield**. No, he didn't.

Mr. **Levitas**. Did Mr. Shipp or anyone else representing the Government say to Mr. Bresler that that didn't have to be provided, that it could not, it would not be insisted upon?

Ms. **Frankenfield**. No, it was discussed at one of the meetings that the cafeteria could be provided on a phased basis, you know, as the people moved in, because, naturally, they wouldn't be moving in all at one time, and as the people moved into the building, then the cafeteria would be enlarged.

Mr. **Levitas**. One other question. I think we have had previous testimony identifying the date and place of that meeting, but just this morning, in order to put it in context, in a time frame, would this conversation have occurred within weeks or a month or so after the solicitation was provided to Mr. Bresler?

Ms. **Frankenfield**. I believe so.

Mr. **Levitas**. Now, when this matter got to the Board of Contract Appeals, in fact, even before that point in some dealings with GSA, Mr. Bresler produced a copy of a lease which he contended was the lease that was responsive to solicitation No. 55, but the page, No. 27, that was in Mr. Bresler's copy that he presented, was different from that which GSA had in its possession, specifically with respect to the requirement that the lessor provide a cafeteria facility at his expense.

Do you have any recollection of this occurrence?

Ms. Frankenfield. I remember that he did say that his page was different. This was not at the time that we had that first discussion?

Mr. Levitas. Not at the time you had that first discussion. Some time later?

Ms. Frankenfield. This was at the Board of Contract Appeals.

Mr. Levitas. Now, there is a suggestion that the different page 27, that Mr. Bresler ultimately said was in his copy as contrasted to that of GSA with respect to Waterside Mall, may have come from another form of solicitation, I recall solicitation No. 40.

Does that refresh your memory?

Ms. Frankenfield. No. 40 doesn't mean anything to me, but we have always had, what we called dummy solicitations, and anyone could come into the office and get a copy of those, and paragraphs were changed, and it was a cut-and-paste operation, and as paragraphs changed and situations changed, those paragraphs were changed, and it could have been in a previous solicitation.

Mr. Levitas. You have already described the fact that after the cut-and-paste was done, and it was sent to the printer, and the copies came back—would the typeface that came back from the printer be consistent for each page of the lease in that particular solicitation?

Ms. Frankenfield. It might not necessarily be so.

Mr. Levitas. How would that be?

Ms. Frankenfield. Somebody different could type the paragraph that was pasted on.

Mr. Levitas. In your review of the document, when it came back from the printer, would you check to see whether there was continuity from page to page to see whether the pages were in proper order, or whether the language which ended up on one page was picked up at the top of the next page?

Ms. Frankenfield. Not necessarily. I might flip through to see that the pages were numbered, but I wouldn't check each page.

Mr. Levitas. What type of review would you make of the document when it came back from the printer?

Ms. Frankenfield. Just to see that they were together, and then to get the envelopes ready to go out.

Mr. Levitas. How did you determine that what went out to the persons who were getting the solicitation was what you had in fact put together and sent to the printer?

Ms. Frankenfield. Just checked the first couple of pages against the original.

Mr. Levitas. And when you sent these two solicitations to L'Enfant Plaza and to Town Center, were those two solicitations that were sent out the same or were they different, one from the other?

Ms. Frankenfield. The first pages were the same. I mean, you know, as I say, I did not go through the whole entire solicitation.

Mr. Levitas. Did you make any changes in those pages?

Ms. Frankenfield. You mean before—you mean prior to sending them to the printer?

Mr. Levitas. No, after they came back from the printer.

Ms. **Frankenfield.** Oh, no.

Mr. **Levitas.** When you sent them to the printer to have them printed you sent one document, is that correct?

Ms. **Frankenfield.** Correct.

Mr. **Levitas.** In response to what you sent to the printer, several copies came back to you?

Ms. **Frankenfield.** You ordered maybe 50 or 25 copies, whatever.

Mr. **Levitas.** You selected a certain number of those 55 copies and sent one package to L'Enfant Plaza and one package to Town Center, is that correct?

Ms. **Frankenfield.** That is correct.

Mr. **Levitas.** Did you make any changes from the time you got that batch back from the printer in the copies you sent to Town Center and the copies you sent to L'Enfant Plaza?

Ms. **Frankenfield.** No.

Mr. **Levitas.** Did you work on this matter involving the Waterside Mall with an individual named Larry Roush?

Ms. **Frankenfield.** No.

Mr. **Levitas.** Do you know who Larry Roush was?

Ms. **Frankenfield.** Yes.

Mr. **Levitas.** Was he involved in supervising management operation?

Ms. **Frankenfield.** Yes.

Mr. **Levitas.** And in terms of the chain of command, where would he have fitted in insofar as your position was concerned?

Ms. **Frankenfield.** He was next to the Commissioner. I was down in the Space Management Division.

Mr. **Levitas.** What about Mr. Art Barton?

Ms. **Frankenfield.** I am not really sure that at the time the solicitation went out, at first, that Art Barton was there. I can't recall, but I don't believe he was there.

Mr. **Levitas.** Bernie Adamec?

Ms. **Frankenfield.** Bernie was there.

Mr. **Levitas.** What was his responsibility?

Ms. **Frankenfield.** He was in construction management, and he sort of supervised, once we made the commitment, he kept a follow-up on how the construction was going.

Mr. **Levitas.** At any time were you required or asked to provide different language for the lease that was entered into with Town Center for the Waterside Mall facilities that deleted the requirement for the lessor providing a cafeteria?

Ms. **Frankenfield.** No.

Mr. **Levitas.** Were you involved subsequently in preparing lease documents for additional space at Waterside Mall?

Ms. **Frankenfield.** Well, actually I didn't prepare the lease documents.

Mr. **Levitas.** Well, you put together the solicitation?

Ms. **Frankenfield.** Yes, the solicitation.

Mr. **Levitas.** Wasn't there some additional space, about 5,000 or 6,000 square feet, that were leased subsequently from Mr. Bresler's corporation?

Ms. **Frankenfield.** As I recall, there was.

Mr. LEVITAS. Was there anything in those documents that you put together that relieved or dealt with the cafeteria?

Ms. FRANKENFIELD. Not to the best of my knowledge.

Mr. LEVITAS. You have no recollection of that?

Ms. FRANKENFIELD. No.

Mr. LEVITAS. There has been some discussion both before this subcommittee and in the press that there had been an oral waiver of the cafeteria requirement. Do you recall any such discussion?

Ms. FRANKENFIELD. I don't recall any such discussion, but I did prepare a letter that sort of indicated that there was, because when I reviewed the file, I got that impression, which was wrong.

Mr. LEVITAS. Who asked you to prepare that letter?

Ms. FRANKENFIELD. Well, the letter—I guess I prepared it for Mr. Galuardi.

Mr. LEVITAS. That was a letter dated August 19, 1975. Is that the approximate date?

Ms. FRANKENFIELD. I would assume so.

Mr. LEVITAS. There was a subsequent letter dated November 11, 1976, signed by Mr. Richard Vawter, who is Information Director of GSA. Do you recall Mr. Vawter?

Ms. FRANKENFIELD. Yes, I do.

Mr. LEVITAS. The letter that he prepared has a statement, "Subsequent location of additional materials made it clear there had been no oral deletion" of the cafeteria requirement.

Were you contacted by Mr. Vawter prior to his sending that letter?

Ms. FRANKENFIELD. I do not recall.

Mr. LEVITAS. You don't recall discussing that with Mr. Vawter?

Ms. FRANKENFIELD. No, I don't.

Mr. LEVITAS. Did anyone other than you and Mr. Galuardi review the letter that you just described before it was sent out?

Ms. FRANKENFIELD. Yes, it was reviewed by the legal office.

Mr. LEVITAS. You testified on this matter at the Board of Contract Appeals, as I recall.

Ms. FRANKENFIELD. Yes.

Mr. LEVITAS. Other than members of this subcommittee or its staff, have you had any discussions about this matter since your testimony before the Board of Contract Appeals?

Ms. FRANKENFIELD. No.

Mr. LEVITAS. Thank you, Ms. Frankenfield, we appreciate your information.

Mr. Molinari.

Mr. MOLINARI. In your capacity, Ms. Frankenfield, GSA would get a request for space and then you would go about trying to fill that need? Is that the procedure that was basically in place at the time you were there?

Ms. FRANKENFIELD. That is correct.

Mr. MOLINARI. We have heard this morning much testimony about the fact that EPA wanted space in the southwest section of Washington. Yet, it is my understanding that in their request for space, there was no mention made of that area.

Would you have any recollection as to whether or not in that request for space that originated this matter, whether it specified the southwest section of Washington?

Ms. **Frankenfield**. I thought that it did. I thought that they asked for space in Southwest. I don't recall but I thought they had asked for space in Southwest.

Mr. **Molinari**. It is my understanding that the request for space did not delineate that section, and of course, the logical question comes up, if it didn't, if they didn't ask for Southwest Washington, why the search for space was limited to that area.

Ms. **Frankenfield**. There probably wasn't any space of that size anywhere probably except in Southwest.

Mr. **Molinari**. Thank you.

Ms. **Frankenfield**. I can't remember at this time, but it is possible that that size block of spaces—you know, those two blocks of space in Southwest were probably the only large blocks at that particular time. I can't say.

Mr. **Molinari**. OK. You then proceeded to look for the space, and the two that responded—well, let me ask you this: Did you contact, you or anybody in your office, contact L'Enfant Plaza or Bresler's corporation?

Ms. **Frankenfield**. You mean prior to sending out the——

Mr. **Molinari**. Yes.

Ms. **Frankenfield**. Not that I know of. We made constant surveys of space that was available, and we knew that those two people had space, and that is why they were sent to those.

Mr. **Molinari**. I know it may be a little difficult to remember this. It was a long time ago, but were both of those realty outfits afforded the same amount of time?

Ms. **Frankenfield**. They were both mailed out the same day. Is that what you are getting at?

Mr. **Molinari**. I was under the impression that L'Enfant Plaza may not have been given the same period of time to comply with the request. Am I incorrect in that?

Ms. **Frankenfield**. No, the solicitation gave everybody the same number of days to respond.

Mr. **Molinari**. All right. Then there came a point where you would advertise?

Ms. **Frankenfield**. I am not sure that this was advertised. I cannot remember whether it was advertised in the newspapers, but is that what you are getting at?

Mr. **Molinari**. It wasn't required to be advertised at the time?

Ms. **Frankenfield**. You didn't have to advertise if you made a survey and you determined that everybody that had space of that size was given an opportunity.

Mr. **Molinari**. And contacted. OK, from your own knowledge, then, the two that would have enough space available were the two that we referred to here, L'Enfant Plaza and Bresler's corporation?

Ms. **Frankenfield**. That is correct.

Mr. **Molinari**. Did you contact them initially or did they contact your office?

Ms. **Frankenfield**. I don't remember.

Mr. **Molinari**. I have no further questions. Thank you, Mr. Chairman.

Mr. **Levitas**. Thank you, Mr. Molinari.

I am going to ask staff to show you two documents which I have identified as A and B, which purport to be provisions that are contained in GSA solicitation documents, and I want you to look at them, and I am going to ask you some questions about them.

[The information follows:]

the main lighting system, due to any failure of public utilities or other outside electric power supply, or any single manual act such as accidental opening of a switch controlling normal lighting facilities.

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10. FOOD SERVICE AND VENDING STANDS

a. Cafeteria

A

(1) A complete cafeteria facility shall be furnished by the lessor at his expense with capacity large enough to serve food to the Federal employees who will work in the leased space as provided in subparagraph (2) below. The size of the dining area shall be based on a Federal employee population of one person for every 150 net usable square feet of office space leased to the Government and a turnover of three persons per seat for the luncheon period. At downtown locations with other suitable food service facilities located within a readily accessible area, it may be estimated that 50 to 55 percent of the total employee population will patronize the required facility daily. At remote locations the estimated patronage should be increased to 60 to 65 percent of the employee population. The Government will ascertain which criteria is to apply to the space offered. A minimum of fifteen square feet shall be allowed for each seat required by these standards. Additional area of from 10 to 15 square feet per seat shall be allowed for supporting areas such as kitchen, food preparation, storage (including storage for all vending operations), locker and trash area.

(2) The management of the cafeteria operation shall be such as to provide Federal employees with high quality and convenient food service, under sanitary and healthful conditions at the most reasonable prices possible. In order to accomplish this objective such economy producing techniques as self bussing and self service shall be practiced, and attractive tables and chairs, attractive decor throughout, and, nondisposable tableware, including china, eating utensils, cups and saucers and glasses shall be provided. To further contribute to this objective, the cafeteria operator shall control and receive the income from all vending machines in the building except those operated by a blind person as provided in (b) below and in direct competition with his stand as determined by the Government. (A machine in reasonable proximity and in direct competition is one which vends articles of a type authorized by his permit and is so located that it attracts customers who would otherwise patronize the vending stand.)

(3) All space occupied by the cafeteria shall be excluded from the area covered by the lease and the Lessor shall assume full control of such space without cost to the Government for rental, utilities, or other charges.

b. Vending Facilities

(1) The Government shall have the right to install and have operated by others whom it may designate, food service facilities, or vending stands and/or vending machines, within the confines of the space leased, if any of such installations are deemed by the Government to be necessary. These installations may require additional wiring, electrical, and plumbin

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the main lighting system due to any failure of public utilities or other outside electric power supply, or any single manual act such as accidental opening of a switch controlling normal lighting facilities.

10. VENDING FACILITIES

The Government shall have the right to install a food service or vending facility within the confines of the leased space to be operated by blind persons licensed under the provisions of the Randolph-Sheppard Act (40 Stat. No. 1559), as amended (68 Stat. 663, 20 U. S. C. 107). Under this act, items sold at vending stands operated by the blind may consist of newspapers, periodicals, publications, prepackaged sandwiches, soups, confections, tobacco products and articles dispensed automatically or in cartons or in wrappings in which they are placed before received by the vendor and such other articles as may be determined suitable for a particular location by GSA.

In addition, the Government shall have the privilege of installing vending machines within the confines of the space leased and determining the assignment of revenue therefrom.

In regard to vending stands operated by the Randolph Sheppard Act and vending machine locations installed at the option of the Government, the lessor must install without cost to the Government all mechanical, electrical and plumbing facilities, including but not limited to hot and cold water, waste and sewer connections, electrical outlets (also 220 volt if required) heating, and airconditioning required for such facilities.

11. FACILITIES FOR PHYSICALLY HANDICAPPED PERSONS

a. Toilets: In addition to the number and types of toilet fixtures and the location of toilet facilities specified in this schedule, not less than one men's toilet room and one women's toilet room shall have a water closet enclosure 3'3'' wide and assist bars and a door 2'8'' wide which swings outward. The entrance doors to these toilet rooms shall have a minimum width of 3'0''.

b. Drinking Fountains: In addition to the requirements for drinking fountains in this schedule, not less than one fountain shall be mounted with the bubbler not over 38'' from the floor. This paragraph and a. above shall be in accordance with U. S. A. S. I. Standard A-117.

Mr. **Levitas**. Have you had a chance to examine those two documents? The one that I have marked A, do you recall that particular set of provisions?

Ms. **Frankenfield**. Yes, I do.

Mr. **Levitas**. What is that?

Ms. **Frankenfield**. It is a requirement for the lessor to provide a cafeteria at his expense in a building that the Government might lease.

Mr. **Levitas**. And what is the document B? What is that?

Ms. **Frankenfield**. Document B gives the Government the right to install food facilities in the space.

Mr. **Levitas**. Which of those two provisions did you include in solicitation No. 55?

Ms. **Frankenfield**. A.

Mr. **Levitas**. The one I have identified as B, do you recall that being one of the stock provisions, dummies as you call them?

Ms. **Frankenfield**. Yes.

Mr. **Levitas**. Was A, a dummy provision, or was it a handcrafted provision?

Ms. **Frankenfield**. Well, I don't know when A came into effect, but when we started leasing large blocks of space, particularly in locations where food facilities were not readily available, we were requested by our concessions branch to include a cafeteria operation in leased space, but I don't know.

I can't say exactly when this requirement came into existence, but this replaced B, I think it was on blocks of space of over a certain size and right now, I cannot remember the exact amount of space. It might have been 200,000 square feet or some large block like that, that this requirement for a cafeteria would be put into the solicitation.

Mr. **Levitas**. Now, you said earlier that it was not unusual for developers or lessors to come to GSA and get copies of contract solicitation documents of the sort——

Ms. **Frankenfield**. Of solicitations.

Mr. **Levitas**. That is right. Would a person have been able to come to GSA and get a copy of a set of documents which would contain the language that appears in document B?

Ms. **Frankenfield**. Well, actually, what would happen was, as you replaced paragraphs on this so-called dummy, you would throw away the older ones, but that wouldn't necessarily mean that somebody didn't have one in their possession, and then this new paragraph here that would replace this one would be in all new ones, but if issued a solicitation not requiring a cafeteria, you would delete this paragraph on your front sheets, saying that paragraph so-and-so is deleted.

Mr. **Levitas**. If a person had previously received a package of solicitation documents, either for Waterside space or other space, it would be possible for there to be a set of provisions such as appear in paragraph B?

Ms. **Frankenfield**. That is correct. In fact, a person who had other space with the Government, as a part of his lease, this particular paragraph or page B, as you refer to it. It could have been a part of a lease that he may have had with GSA, because you didn't have a requirement for the cafeteria.

Mr. **Levitas**. If I were a person who owned some space in Washington, and heard that there may be a need for space of the sort that I had, but before an actual solicitation or an advertisement, would it have been possible for me to come and meet with some of the people at the Office of Space Management, talk about the type of requirements that GSA would normally expect and get sample, specimen copies of solicitation documents?

Ms. **Frankenfield**. Yes.

Mr. **Levitas**. On January 5, 1971, EPA officially requested to lease space through GSA to house the operation we have talked about, and they requested at that time 400,000 square feet, plus or minus 5 percent.

The next month, February 23, 1971, GSA and Town Center Management entered into a formal lease for that space to house EPA, and at that time, they leased 526,800 square feet of rental space.

That is about 126,000 square feet more than they originally requested.

Do you know why they sought, or why the additional space was provided in the lease that was entered into?

Ms. **Frankenfield**. The only thing I can say is that their requirements must have increased.

Mr. **Levitas**. I have no further questions.

Mr. Molinari.

Mr. **Molinari**. No.

Mr. **Levitas**. Thank you, Ms. Frankenfield. I appreciate your information. Would you give those two documents back to the staff.

Let me ask you this before you leave, Mr. Trietsch. During the course of your investigation, did you find copies of document B at any point other than in Mr. Bresler's purported copy of the lease?

Mr. **Trietsch**. In the files that we reviewed, which were the lease files for the Waterside Mall, I don't believe that we found any copy of your document B, to the best of my recollection.

Mr. **Levitas**. Mr. Mitchell.

Mr. **Mitchell**. No, sir, we did not find a copy.

Mr. **Levitas**. All right. Thank you very much, Ms. Frankenfield.

The Chair calls to the witness table Mr. Charles S. Bresler, Chairman of the Board, Town Center Management Corp.

The Chair notes the absence of Mr. Bresler, and the Chair will ask the staff to ascertain whether Mr. Charles S. Bresler is present, check the halls and the committee staff room.

The subcommittee has issued a subpena for the attendance of Mr. Bresler at today's hearing.

The staff reports to the Chair that Mr. Bresler is not to be found in the vicinity of the committee room, nor in the committee room.

I would like to, at this point, ask Mr. Nolen, a staff member, to state for the record what action was taken with respect to the subpena issued by the subcommittee for Mr. Bresler's attendance.

Mr. **Nolen**. Mr. Chairman, the subcommittee staff has been in contact with Mr. Bresler as early as May 1981 in an effort to personally discuss the matters and the events surrounding the missing cafeteria. However, it was not until September 1981 that we actually met with him.

Mr. Bresler declined on the advice of his attorney to discuss the matters with subcommittee staff. We contacted and ultimately met with Mr. Bresler's legal counsel, only to be told that he, as Mr. Bresler's adviser, had instructed Mr. Bresler not to discuss the matters, nor to attend any hearings held by this subcommittee.

The subcommittee met with the same response to their request for information from Mr. Bresler on several occasions.

Mr. Bresler was served a subpena to appear personally here today and produce certain specific documents related to the Waterside Mall agreement.

Since Miss Downie responded to the actual service of that subpena, she can describe the service.

Mr. **Levitas**. Ms. Downie, professional staff member of the subcommittee staff.

Ms. **Downie**. Yes, we went into his office last Thursday and asked whether he was there, and if we could see him for just a few moments. I did identify myself by name and where I worked. He came out.

I told him that we were there at your request to ask if he would appear at a hearing. When he said no, I reached under my arm, pulled out the subpena, handed it to him, and said, "Then I regret that I must serve you with this subpena."

I then told him that attached to the subpena was a letter from you with a list of documentation or documents that we would like, and that there was also a copy of the subcommittee rules.

I mentioned that the date would be Tuesday, December 14. He said, "Now, let me check," and he went back into his office, was gone, oh, just a minute or two; and he came back out and said, "OK, I have got the subpena," and he held it up and we walked out.

Mr. **Levitas**. Did Mr. Bresler at that time indicate that he did not intend to attend pursuant to the subpena?

Ms. **Downie**. He did not indicate one way or the other. He merely said he had the subpena, nodded, said good day, and that was it.

Mr. **Levitas**. And what time of day and, again, for the record, specifically the location at which you served the subpena.

Ms. **Downie**. It was at his offices at 401 M Street, at the Waterside Mall. I believe the time, it was written on there, was approximately 1:30, 1:20, somewhere.

Mr. **Levitas**. And that was last Thursday?

Ms. **Downie**. December 9.

Mr. **Levitas**. In the course of your conversation with Mr. Bresler, did you make it clear that the subpena was for the purpose of requiring his attendance at this hearing today?

Ms. **Downie**. Yes, I had initially identified why we were there, that we were there to ask him to come to a subcommittee hearing, that you had requested that we do that, and when he said no, is when I produced the subpena. I said then, "I regret that I must serve this subpena."

My other comments specified the date and location of the hearing that he was being subpenaed to come to.

Mr. **Levitas**. Thank you.

Ms. **Downie**. I had no further conversation with him after that.

Mr. **Levitas**. Mr. Nolen, did you hear the conversation just related by Ms. Downie?

Mr. **Nolen**. Yes, Mr. Chairman, I did.

Mr. **Levitas**. Was there any question in your mind that Mr. Bresler understood that the subpena was for his attendance at this meeting?

Mr. **Nolen**. No reservations about that understanding.

Mr. **Levitas**. Thank you.

Mr. Molinari.

Mr. **Molinari**. No questions.

Mr. **Levitas**. I show you a copy of a purported subpena, if you would identify that as being a copy of the subpena you served on Mr. Bresler?

Ms. **Downie**. Yes, it is a copy of the subpena, and on the back I have signed that it was 1:05 p.m., and I put down the address and the date and signed it.

Mr. **Levitas**. I have no further questions.

The Chair will refer this matter for appropriate action to the subcommittee at a meeting very shortly, so that necessary steps can be taken to insure compliance with the subpena or the citing of Mr. Bresler for contempt for failure to attend pursuant thereto.

Is there any further business to come before the committee today? If not, the subcommittee will stand in recess, subject to the call of the Chair.

[Whereupon, at 12 noon, the subcommittee recessed, subject to the call of the Chair.]

REVIEW OF GENERAL SERVICES ADMINISTRATIONS LEASE MANAGEMENT OF WATERSIDE MALL

TUESDAY, MAY 24, 1983

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:17 a.m., in room 2253, Rayburn House Office Building, Hon. Elliott H. Levitas (chairman of the subcommittee) presiding.

Mr. Levitas. The subcommittee will please come to order.

Today, the Public Works and Transportation's Subcommittee on Investigations and Oversight reconvenes, hopefully, to conclude its review into the so-called missing cafeteria, an unwarranted $750,000 loss to the American taxpayer.

For the benefit of those here today who were not present during the previous 4 days of public hearings held by this subcommittee, the Waterside Mall lease agreement was entered into by the General Services Administration, the landlord for the Federal Government, and Town Center Management Corp., the owner of the Waterside Mall shopping complex then under construction in Southwest Washington, D.C.

The lease agreement was designed to provide space in which to house the newly created Environmental Protection Agency here in our Nation's Capital. The original lease was negotiated in early 1971, and it called, among other things, for the lessor, Town Center Management Corp., to provide a cafeteria to service the needs of the employees of the new Federal agency. However, GSA officials directly commissioned to administer the lease agreement failed to expeditiously require Town Center Management officials to install the cafeteria facility as the lease provision specifically set forth. The members of this subcommittee want to know by whom, and under what authority the cafeteria provision in the lease was allowed to be disregarded and ultimately lost through what a GSA Board of Contract Appeals administrative law judge termed a de facto waiver. In my judgment, such costly bureaucratic bungling of a Federal lease should not be tolerated, and you may rest assured that as long as I am chairman of this oversight committee, I will continue to exercise every ounce of my legislative power to insure that the necessary precautionary measures are taken to assure that such valuable rights to the Federal Government are not disregarded and ultimately lost.

This investigation is primarily focused on how these types of situations can occur that cost the American taxpayers loss of their hard-earned tax dollars, as an illustration of how GSA manages or, in this case, mismanages, its responsibilities.

The sworn testimony and documented evidence presented during the first 4 days of hearings on the missing cafeteria, has indeed caused considerable concern to the members of this committee as to the apparent inability of GSA officials to adequately negotiate and administer the lease space program for Federal tenant agencies. The members of this subcommittee heard evidence to indicate that restrictive geographical requirements in the GSA solicitation for offers limited the number of capable bidders to provide the required lease space; inadequate and ill-maintained GSA files; loss of valuable contractual rights to the Federal Government due to the lack of proper negotiation and administrative procedures on the part of GSA officials; circumstantial evidence indicating a definite possibility that high-level influence by GSA officials was responsible for the deletion of option provisions worth several hundred thousand dollars to GSA without obtaining any compensation in return; most of all, insufficient eating facilities for Federal employees, although the funds to acquire those needed facilities were appropriated and expended.

The Federal rental budget for space to house Federal employees will cost U.S. taxpayers an estimated $1 billion annually by fiscal year 1985. Flagrant mismanagement of the lease rental program must not be allowed to continue. You would think that by now, GSA officials would have the knack of managing lease rental agreements, but obviously, they do not. I, for one, am not sure that this type of lease management is what Congress had in mind when it passed legislation designed to provide for the lease space program.

This subcommittee has a responsibility to investigate whether waste, fraud, and abuse, mismanagement or malfeasance or all of these, existed in the administration of the Waterside Mall lease agreement, or any other lease agreements. We are going to leave no stone unturned in an effort to bring this investigation to a successful conclusion by determining by what authority, and as a result of whose decision, the provision for the cafeteria facility was allowed to result in a loss to the Federal Government.

Memories of GSA officials who have appeared before us up to now have been, in some cases, remarkably poor, and I might add, remarkably selective, especially as to who did what in the negotiations process. So poor, in fact, that we have asked Mr. Bresler, chairman of the board of Town Center Management Corp., to join us this morning to testify as to his recollection of events surrounding the lease, leading up to its negotiation, and as to its management with respect to the matter under consideration Perhaps from him we can establish at what time and under whose direction decisions were made which have brought us to where we are today, 12 years later, and still no cafeteria.

It is for this reason that members of the subcommittee have requested Mr. Bresler to appear today to explain to the members of the subcommittee his understanding of why the cafeteria facility was not provided in the Waterside Mall.

Before I ask Mr. Bresler to come forward, I would like to ask if Mr. Molinari has any statement.

Mr. **Molinari**. Just briefly, Mr. Chairman, I would like to associate myself with the remarks that you just made. They pretty well cover the entire subject matter.

I must say that, in reviewing the matter, the more you look at it, the more puzzled one becomes. And certainly, I get the impression in reviewing the testimony, as I did yesterday and this morning, that were it not for certain newspaper accounts which highlighted the cloudy background, this matter may have just quietly gone away in some court.

I am at a loss to try to understand how some of these things occurred. I am hopeful that today, we will get some of the answers that we have been searching for. Certainly, a major lease of this kind, with the amounts that are involved and with the size of the building—I think it is inexcusable that both sides of the issue could have permitted a lease to be negotiated and executed with some of these open questions.

With that in mind. Mr. Chairman, I think we should proceed, and maybe we will get some answers today.

Mr. **Levitas**. Thank you very much, Mr. Molinari. Hopefully, we can conclude these hearings today.

Mr. Charles S. Bresler, chairman of the board, Town Center Management Corp., would you please come to the witness table, and if you are accompanied by counsel, he may come forward.

TESTIMONY OF CHARLES S. BRESLER, CHAIRMAN OF THE BOARD, TOWN CENTER MANAGEMENT CORP., ACCOMPANIED BY MARION E. HARRISON, COUNSEL; AND DENNIS TRIETSCH, ATTORNEY, OFFICE OF COUNSEL TO THE INSPECTOR GENERAL, GENERAL SERVICES ADMINISTRATION

Mr. **Bresler**. Mr. Chairman, I am Mr. Bresler.

This is Mr. Marion Harrison, with the firm of Barnett & Alagia. He is my counsel.

Mr. **Levitas**. Welcome, gentlemen. Will you please raise your right hands?

Do you solemnly swear the testimony you will give before the subcommittee today will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Bresler**. Yes, sir, I do.

Mr. **Levitas**. Thank you very much Mr. Bresler and Mr. Harrison.

I am going to ask Mr. Dennis Trietsch, who is an attorney with the Office of Counsel to the Inspector General, General Services Administration, if he would please come forward. I think he has been previously sworn, and has been involved in this matter.

The purpose of the hearing today, as I have outlined, really is twofold—first, to determine whether or not the cafeteria required by the Town Center Management Corp. lease with GSA—not whether it had provision in it or not, but the circumstances leading to the execution of that document; and second, why the cafeteria still is not there—and we are familiar with the Board of Contract Appeals' decision, I might add.

In accordance with our procedures, let me make certain you have a copy of the rules of our committee.

Mr. **Bresler**. No.

Mr. **Levitas**. If not, they will be handed to you.

Before we begin, Mr. Bresler, if either you or Mr. Harrison have any opening comments, or if you care to offer some overall discussion or explanation concerning the questions I have raised, you may feel free to proceed as you so desire.

Mr. **Harrison**. Mr. Chairman, we do not. We came because you asked us to come, and we are here. Mr. Bresler will try to answer questions to the best of his recollection.

Mr. **Levitas**. By way of opening, Mr. Bresler, let me ask you this, if you would recount to us how you first became involved in seeking to become lessor of the space requirement that GSA was seeking to fill; what was your first recollection of the needs by GSA, and what was the source of that information?

Mr. **Bresler**. Well, first, let me remark, Mr. Chairman, and Mr. Molinari, that we are talking about a time some 13 years ago, and I must admit, with due respect to my father, I never understood how he could not remember things as he got older, and I will admit quickly that 13 years have fogged my memory quite a bit, and also, things that appeared to happen in one sequence seemed to happen in another. I might also state that I have been interviewed a number of times by GAO and GSA and IG, and I think, people from this committee, and testified under deposition at great length. Further, I testified in the hearing before the Board of Contract Appeals at great length on all of the things that were fresh—well, not fresh in my mind; they had happened maybe 5 or 6 years before—but at least I had a chance to recollect and refresh my memory and go over documents in deep detail.

So, what I say may be hazy in some instances, and I am not trying to be evasive. It is just difficult to put into actual context. And I may stand to be corrected by documents that, as I say, I received some 4 pounds of documents which I reviewed, and I do not know any more from these today than I did 5 years ago when the case was heard.

In response to your question, I have been in this business for better than 25 years and have been in the Washington area. I believe I first started dealing with GSA and other Government agencies back in the early 1960s. It was the procedure—and I believe it still is now—to make GSA aware of all new office space coming up, similar to any manufacturer who makes the GSA contract people aware of things that they are manufacturing or things they are willing to sell. In addition, to the best of my recollection, GSA maintained a department which wanted to know what was available in the marketplace, and in response to that, they would send out written circulars or telephone calls on a regular basis to real estate agents and developers in the area—at least, in this area—stating what are you building, what are you planning on building, when will it be ready, how many feet are involved, what type of space, where will it be. That is how, in response to your question, Mr. Chairman, the initial knowledge of a lease for space in the Southwest was first made by me to GSA. Now, I do not know which came first, whether they called me in the early stages of the construction, or whether or not we just curiously or routinely sent them the notification that we were in the process of getting space ready to market.

Mr. LEVITAS. When did the acquisition of property by your company occur in Southwest Washington that is now Waterside Mall?

Mr. BRESLER. Well, to correct the record, Town Center Management Corp. did not acquire the property. They are the management agent for the property. The property was put under contract in, I believe it was 1950-something by a predecessor company of ours.

Mr. LEVITAS. And at what point did you or your associates, if you had any—did you have any investors with you in this?

Mr. BRESLER. Yes—well, the Waterside complex is broken up into a number of individual—three partnerships and one corporation.

Mr. LEVITAS. And do you have the names of the other investors?

Mr. BRESLER. Mr. Reiner—first, let me break it apart. I believe in the record of the hearing before the Board of Contract Appeals, we provided them with a box chart of the ownerships. The overall Bresler & Reiner, Inc., which is a public corporation, owns the east half of the Waterside Mall. The Trilon Plaza Co.—and Charles Bresler and Burton Reiner are the general partners of that; it was a corporation, it became a general partnership—own the west half of the Waterside Mall and what is known as the West EPA Tower. The East EPA Tower is owned by East Partnership, of which Bresler & Reiner, Inc. is the general partner. Town Center Management Corp., which is the management agent, is a wholly-owned subsidiary of Bresler & Reiner, Inc., which manages all of our rental properties, and also performs other real estate-related functions.

Mr. LEVITAS. When did the development of the facility begin, in terms of excavation and construction?

Mr. BRESLER. The initial portion of the Waterside Mall, which is known as Town Center, was built in 1952–53. The next section of the mall, including the West Office Tower, the initial construction on the mall started in 1967—and I may be off on these dates, but thereabouts—and the full construction of the West Office Tower started in 1969 and proceeded through 1974 or 1975, interrupted by Metro construction, and the last section was completed about a year-and-a-half ago.

Mr. LEVITAS. The construction that began in 1969 is what you identified as the West Tower. It is my understanding that it was being developed for general-use office space. Is that correct?

Mr. BRESLER. No, sir. The urban renewal plan limited the use of the space to offices for Government services serving the southwest area and not general office space as we know general office space. It is very vague language. It is part of the urban renewal plan, which I believe was adopted by this Congress. So it was not general office space in the terms that anybody could move in and rent it. You could not have a headquarters company of, say, to our understanding—and of course, I am not an attorney, and different attorneys will interpret in different manners—but you could not very well have a major home office of a real estate company there; however, you could have a branch office that would serve the southwest area.

Mr. **Levitas**. You said that the plan or the development that you commenced in 1969 could be used for Government office space.

Mr. **Bresler**. That is correct.

Mr. **Levitas**. Did you build the structure to specifications that were then in existence for Government office space?

Mr. **Bresler**. I do not quite understand what you mean by your question. Office space has always been, in my estimation, office space. The fact that the Government uses it, each agency or the General Services Administration may determine for their own use that they want something a little different than somebody else has, but basically, a building is a building. We build a shell, and it could very well be an apartment house, it could be an office building; it could be almost anything within the enclosure or the envelope. The only thing that changes are the mechanical systems, such as this conference room, because of its size and its height, and the number of people—it will require special environmental services to exhaust the smoke and to provide for large numbers of people. But basically, the building is built to all code requirements, both local, national, and GSA codes, which are usually adapted to the local codes, the national fire codes, and national BOCA codes.

Mr. **Levitas**. There were, so far as you can recall, no specific GSA standards relating to certain systems or space or structural requirements that were different from those generally prevalent for office space in Washington, D.C.?

Mr. **Bresler**. Not to my knowledge. The architects in the field, especially in Washington, where an awful lot of the construction of office space does have the Government in mind, normally check with GSA as to any changes they may be making in their normal construction requirements, and they design to that. Now in most instances, the local codes and the GSA codes, such as the number of feet to an exit and the type of construction, are pretty much the same.

Mr. **Levitas**. Let me tell you one of the questions I am getting at, because I will get to this particular lease in a minute. I am told that one of the problems in the functioning of this building now as EPA headquarters, for example, is the fact that the elevators and the elevator system is not designed for a great deal of intra-building operation, and that there have been problems associated with that. I am trying to find out whether or not you had any concept of building this differently from any other type of office structure, that would have been built in this area.

Mr. **Bresler**. Mr. Chairman, may I comment on that, as well as many of the other things I have seen in the record, and I think particularly, you may be talking about the union representative's contention.

When a building is built, the elevators in that building are, I believe, Westinghouse elevators. They do not know that they are in an apartment building, an office building, or a hospital that is 12 stories high. They are so big and so wide, similar to the ones in this building here; operate at so many square feet per second, with so many stops, and are run by a computer or a controller, and they have no idea who is in the building. They can be programed based on a utilization of the building to go to a certain floor at 8 o'clock, or to be midway between the 13th and the basement floor. This was a rumor that was rife in the building for a long time. GSA and Westinghouse both sent in major crews to check out the elevators. They found that they met all specifications and, in fact, were above and beyond the normal space requirements. So I do not know where such a thing came about. What you do get in elevators is abuse. We did go through periods of time when the agency—during different changes in the agency—where we had tremendous vandalism to the elevators. And of course, you get normal abuse in an elevator. For example, being in the business, on a rainy day, you can be sure that half the buttons on the floors, especially the first floor, are not going to work, because people come in and stick their umbrellas in those little buttons—or, on a cold day, when you have a heat-sensitive button, normally, the heat of your hand touching the button turns the light on, not your pushing it. If you come in from the outside on a subzero day, and your hand is cold, and you push the button, it will not register, no matter how many times you push it. We did have those problems as you do in many office buildings, but they are no greater or no worse than anything else.

Mr. LEVITAS. When you began to develop and construct this West Tower office space, did you have any lease or other arrangement at that time, with GSA, for the occupancy of this building for EPA or any other agency?

Mr. BRESLER. No, sir. In fact, when GSA signed the lease, we did not know the agency that was coming in.

Mr. LEVITAS. Did we identify a time when you first learned of the GSA interest?

Mr. BRESLER. No. I said it was our procedure, as well as GSA's procedure, to normally keep GSA aware and——

Mr. LEVITAS. I am trying to find out approximately when you found out that they were interested in acquiring this space, or some space in Southwest Washington.

Mr. BRESLER. I believe sometime in 1970, we responded to an offer by GSA for space. I do not know what offer it was, or whether it was for EPA or somebody else.

Mr. LEVITAS. But it was at that time in late 1970 where, either as a result of your letting GSA know you had space available, or their letting you know they were looking for space, that that particular West Tower at Waterside Mall first became a subject of interest between you and GSA, and that original information concerning GSA's interest came from GSA?

Mr. BRESLER. That is correct, sir. They would normally send out to all real estate agents and builders in the area—and in fact, I do not know whether they were advertising in the newspapers at that time that their solicitation was coming up—and if you are interested, please call their agency, and they would send you, then, the solicitation letter.

Mr. LEVITAS. What I want to make certain is that your information about GSA's interest in acquiring space in that area came from no one outside of GSA.

Mr. BRESLER. There may have been some real estate agents who called. Normally, many of the leasing agents in town, such as Shannon & Luchs and many others, keep active leasing departments and keep a complete record, as does GSA, of all new space being built. It is also my understanding that we do not do that, because we are not representing other people; more, we represent ourselves and our management and leasing department. But they quickly will pick up the phone and call and say, "There is a solicitation out. Are you bidding on it?" Or, "Are you interested in having us represent you to bid on it?"

Mr. **Levitas**. Did you receive information concerning the desire for GSA to acquire space in Southwest Washington from any official in Government outside of GSA?

Mr. **Bresler**. Not to my knowledge, no, sir.

Mr. **Levitas**. You received some solicitation from GSA concerning their need for space in this area. Did they send you, or did you receive from them, a list of specifications or requirements of what it was they were looking for?

Mr. **Bresler**. We normally would receive, and I presume I did at the time—I cannot be sure whether it came immediately or came sometime later—what they call an "SFO" which is usually boilerplate. It comes in with page upon page of material telling about the type of building, the number of elevators per person, the number of exits, the type of walls. Normally, they are all pretty much boilerplate and have been the same for years, and then any special requirements on top of that may be added to it in the form of addendums, and then normally, between the time the specification comes out and the time the final negotiations are consummated, there may be some other additions or deletions based on the client or GSA's own individual requests.

Mr. **Levitas**. At some point after receiving this SFO, as you described it, did you enter into negotiations with GSA concerning this space?

Mr. **Bresler**. At some later point, yes. The normal procedure, Mr. Chairman, is that you submit a GSA form and a list of requirements that meet the congressional mandate, such as the five points—that the building has been under construction, that your permits are there, that your financing is in place, and all of the various things that go along with it, as well as what you are willing to provide, the length of the lease that you are willing to execute, and the price per square foot, and any other things that GSA may have required in the solicitation. You submit that, and that is what normally happened, and I believe happened in this case. Then at some time later, if you are one of the selected people—and it is my understanding, having dealt with GSA since the early 1960s that they will then probably break it down to three or four possible buildings or possible blocks of space and start negotiating. Whether they negotiate with everybody at the same time or separately, I am not sure, but they will then start negotiating out various items of the lease.

Mr. **Levitas**. Did you personally engage in negotiations with GSA concerning the lease of space at Waterside Mall?

Mr. **Bresler**. Yes, I did.

Mr. **Levitas**. And do you recall approximately when you had your first face-to-face meeting with them in connection with that?

Mr. **Bresler**. No, I cannot. I believe that I testified in the hearing before the Board of Contract Appeals as to dates, and whatever I said then was to the best of my knowledge true at that time, and

I will stand on whatever those dates are. I know nothing that would change my mind.

Mr. **Levitas**. During the course of your negotiations with GSA, what is your recollection concerning the discussion about providing space for or construction of a cafeteria in that facility to serve the employees of the agency to occupy it?

Mr. **Bresler**. To the best of my recollection—and again, let me qualify by saying that I think I have fully stated in prior testimony, and I am not here to change that testimony, and if my recollection differs now, it is because of the passage of time, and I am not trying to be evasive—but there was a concern at the time because of the newness of the area that there would be sufficient eating facilities in and around the complex, and sometime during the negotiating session, prior to the time the lease was accepted by both parties, there was a question whether there would be food facilities in and around the complex. We at that time had entered into a number of leases for the commercial area of the space with food service operators. There was also a concern, as I recall, for the installation of an executive dining room and some sort of eating facility that would be used by the senior staff of whoever was going to occupy. At that point, we did not know who the occupant would be or understand any of that. We assured the GSA leasing representatives that: No. 1, there would be adequate food facilities to service the complex, both in the complex and adjacent to it within walking distance, and No. 2, that in the eventuality the Government or the agency in its wisdom determined that they wanted to install an eating facility such as is at the Pentagon, or was then being built on the top of DOT, the Secretary's dining room, which was being run by the Coast Guard, that the mechanical systems of the building were sufficient to have such a thing done, and that they could do it, so long as they gave us their plans, and we approved them, and it would be at a cost plus 10 percent for profit and 10 percent for overhead. There was no question at that particular time that they could do all those things if they wanted to.

The only thing I recall—I do not know if it was then or later—there was some question about GSI coming in with a cafeteria, and that was ruled out.

Mr. **Levitas**. Do you recall a Mr. Richard Gaskins?

Mr. **Bresler**. I remember the name, sir; I do not remember him.

Mr. **Levitas**. He was a GSA employee in the Office of Space Management, and according to his testimony, there was a discussion with you in 1970 concerning where the cafeteria would be located and that you displayed plans at that time, which were shown at this meeting, that a cafeteria facility would be located on the second floor. At the time this occurred, it is my understanding that the offices of Town Center Management were located on the second floor of the building. Does that ring a bell with you?

Mr. **Bresler**. Well, now that you mention that, that brings back my recollection of the hearing. I believe both he and a woman from GSA both stated that. We in the Board of Contract Appeals brought all of our plans—the plans that were submitted in 1970, as well as the plans that were submitted when we gave them some 85 pages of plans—and there was never any indication of any cafeteria on the second floor. There may have been discussions with GSA personnel as to places where you could put food facilities, as they call a cafeteria or a restaurant, or whatever you want to call it. But our office was on the second floor. You are correct in that. And that was stated at the hearing—and I believe it was disproved, wasn't it, Marion?

Mr. **Harrison**. Well, we think it was.

Mr. **Levitas**. Do you recall a document which has been previously identified, known as GSA solicitation No. 55? There has been a lot of testimony about it, both at the Board of Contract Appeals and before this subcommittee.

Mr. **Bresler**. Yes.

Mr. **Levitas**. Do you recall that?

Mr. **Bresler**. I recall that there was a solicitation, and it was No. 55, yes, sir.

Mr. **Levitas**. And do you recall that that solicitation specifically called for a cafeteria being provided at no cost to the lessee?

Mr. **Bresler**. I recall that there was a question about what that solicitation provided, whether it did or did not. We make no claim that it did either one.

Mr. **Levitas**. Do you recall Mr. Loy Shipp?

Mr. **Bresler**. I recall the name, yes, sir.

Mr. **Levitas**. He was with GSA. He is no longer employed. He is retired—and he said that he had discussions with you concerning what was at that time identified as paragraph 10(a), which called for the lessor to provide a cafeteria, in response to that provision in solicitation No. 55.

Let me show you a copy of this document and ask you if you are familiar with it.

[Witness perusing document.]

Mr. **Bresler**. Yes, sir, I have seen this, yes.

Mr. **Levitas**. Do you see where it says that the cafeteria will be provided at no cost?

Mr. **Bresler**. Excuse me. I need my glasses to read this print—Perusing document. Yes, sir. Under No. 3 on the bottom, yes.

Mr. **Levitas**. It says at no cost?

Mr. **Bresler**. That is correct.

Mr. **Levitas**. After you had these precontract or prelease discussions with GSA officials, at some point, a lease was entered into. Do you recall approximately the date of that?

Mr. **Bresler**. No, sir, I do not. It was in early 1971. I believe it was in February or thereabouts.

Mr. **Levitas**. Mr. Earl Eschbacher—does that name mean anything do you?

Mr. **Bresler**. Yes, sir.

Mr. **Levitas**. Mr. Earl Eschbacher was a GSA realty specialist, and he testified that he visited a construction site with other GSA officials, EPA officials, at that time in 1971, and that you were present, taking a tour of this facility, and that you pointed out—"Mr. Bresler pointed out a specific area, stating that, 'This is where your cafeteria will go.'"

Do you recall that meeting and that discussion?

Mr. **Bresler**. No, sir.

Mr. **Levitas**. During the Board of Contract Appeals—and I am going to categorize it, and if you want to disagree with me, fine—

during the course of that, there was question as between whether the language which I previously showed you in solicitation No. 55 was in the final lease document or whether another version which you submitted was in the lease document that was different, were in fact the lease provisions. The Board of Contract Appeals concluded, as I recall their opinion, they found that the provision which I showed you, calling for providing a cafeteria which would be built without cost to the Government, was indeed the accurate and correct text of the lease, but that whatever rights the Government might have had, had been de facto waived as a result of failure to insist upon that construction going forward. Is that your understanding of the final decision of the Board of Contract Appeals?

Mr. **Bresler**. My attorney just said that is a pretty fair reading of it.

Mr. **Levitas**. Is that a pretty fair reading?

Mr. **Harrison**. Yes, sir, that is a pretty fair reading of the Board ruling on that point, or on those two points.

Mr. **Levitas**. There was in fact, Mr. Bresler, a great deal of discussion during the early part of 1971 between you and GSA about providing a cafeteria; isn't that correct?

Mr. **Bresler**. There was a great deal of discussion about the entire building and delivery and time factors. The building was under construction then and was moving on to completion, and there were regular meetings held with GSA and, at that point, the agency personnel, about the space, how it would be allocated, the special needs in the various areas of space, move-in dates, and all of the various things that you run into when you are trying to deliver something to the Government.

Mr. **Molinari**. Mr. Chairman.

Mr. **Levitas**. Yes?

Mr. **Molinari**. I do not think the witness has responded.

Mr. **Levitas**. No, I do not think you answered my question. My question was, wasn't there a lot of discussion about the cafeteria during this period of time?

Mr. **Bresler**. There was discussion about food facilities, Mr. Chairman. The word, "cafeteria," keeps getting into use, and we always talked about food facilities. I believe even in the hearing before the Board of Contract Appeals, there was no clear-cut decision rendered as to what is a cafeteria. I think that GSA brought in experts, and we had people there who testified as to what a food facility was and what a cafeteria really is. So I am not disputing what you are saying. I am just stating that we always discussed food facilities, because one of the concerns of the agency, and GSA, and ourselves, also, was would there be adequate food facilities in, on, and around the premises to service the employees as they came in.

Mr. **Levitas**. Let me show you a copy of a document containing three pages. The first page says, "Waterside Mall, Two Fashion Courts, Second Level," and perhaps you could identify more clearly for me what that document is. And after you have done that, I would ask you to turn to the second page.

Mr. **Bresler**. This was a preliminary leasing brochure developed by the then leasing agent, a commercial leasing agent, Center Development Associates, which we were not related to—they are commercial leasing people—with proposed and suggested layouts for the utilization of the second floor, and I believe there was a first floor page, also, of the mall. And if I may call your attention, also, to the disclaimer, on page 3—rather, I think it is page 3, but really, part of page 2—which says it is suggested, and the dimensions and locations that tend to move depending on the use of the tenancy.

Mr. **Levitas**. What is the significance of the item on page 2, identified by numeral XII, saying, "Cafeteria"? What was the significance of that, as far as you were concerned?

Mr. **Bresler**. That would be the suggested layout and a place where an eating facility of a cafeteria-type nature could very well be put. The entire area actually came out far differently than this. To the north, where you see "Cinemas," that is not there, and none of the areas that you see in here actually were leased as that. The sporting goods shop south of the cinema became a men's store. The medium-grade family shoes became a boutique. The bridal section became a Far Eastern type of gift shop. So these are suggestions as to what the leasing agent would like to see.

Mr. **Levitas**. You testified that there was discussion with GSA about providing adequate eating facilities.

Mr. **Bresler**. Yes, sir.

Mr. **Levitas**. At what point did GSA say to you, "How about that cafeteria you were supposed to provide? Where is it, and what are you going to do about it?"

Mr. **Bresler**. I do not think they ever really did come up with that. Firstly, I might qualify again by stating that we do not really provide the cafeteria or restaurants or the various stores there. What we do is we go to food service operators as well as we go to all other commercial tenants and say, "Here is a market. There are *x* number of people here. This is space that could be utilized. Are you willing to come in and service it?" And in most instances, you will find that if your market is sufficient, that your commercial tenants come in. They then pay us rent for the facility. They then outfit the facility to their own specifications. For example, we have six or seven eating places in the complex, all of whom pay market or above-market rent, based on the amount of business they do, and have completely outfitted the space on their own and pay their taxes to the District of Columbia, and provide the services, whether it be food or anything else.

So, the discussions, as I recall, were during the period of time in the early move-in period. There was concern about the fact that those restaurants and food facilities that were being built would not be ready, coincidentally, with the first move-ins.

Mr. **Levitas**. My question is, obviously, there was at some point in time a communication between GSA and you, saying, "Where is the cafeteria?" because if that had not occurred, we would have never had the Board of Contract Appeals.

I am trying to identify your recollection of when that first occurred. Let me tell you what my information is on the testimony previously provided, that during the construction period, several occasions occurred in which GSA officials said, "How about this cafeteria? Where is it? What are you going to do about it?" and that there was eventually some correspondence in connection with that.

I am trying to find out what is your recollection of the nature of those communications by GSA to you and your response to them, relating to where is that cafeteria?

Mr. **Bresler**. To the best of my recollection, they inquired consistently during the early months of the move-in about food facilities. At some point in time during the initial move-in stage, it was agreed between the GSA and the agency that an automatic cafeteria would be put in on an interim basis until the food facilities that were to be located in the complex were completed, and this was done. That was sometime in the initial phases of the occupancy, perhaps the first 6 months of occupancy. About a year later, as they started filling up, the food facilities that were leased prior to GSA executing their lease were being completed and made ready and opened for business, and that automatic cafeteria then closed, and the food facilities took over. That was in about the second year.

We never, then, heard another thing——

Mr. **Harrison**. There was a long gap.

Mr. **Bresler**. Yes, there was a long gap, Mr. Chairman, and I guess it was maybe 3 or 4 years later, somebody came up and said, "Hey, we want a GSI cafeteria." I believe it was some employees' group who insisted they wanted someplace where they could go in and brownbag it, and that they wanted cheaper prices, and I believe they so testified at the Board of Contract Appeals, that they still wanted a GSI cafeteria. That came about 3 or 4 years later, well after the complete occupancy was completed.

Mr. **Levitas**. Let me go back, Mr. Bresler, to what I had said earlier, at the outset of these hearings. At this point, what I am trying to find out is where did GSA fall down in achieving what the Board of Contract Appeals said was its right under the lease, namely, to have a cafeteria provided at no cost. Now, that is what I am trying to get at.

I have a letter dated February 4, 1972, from Mr. Arthur Barton, GSA, to you. I will let you see a copy of this, but I just want to refer to the pertinent part of it. It says, "I am very much concerned about the present condition of totally inadequate eating facilities for the occupants of the Waterside Mall complex. In your amendment to the proposal to lease space dated February 12, 1971, in response to our solicitation for offers, dated January 19, 1971, you agreed to provide cafeteria facilities as follows," and then, what is quoted is a provision of the sort that I already made reference to about providing the cafeteria at no cost—I will let you see a copy of this letter. Now, this letter to you specifically discusses that cafeteria question. There is testimony that this letter did not come out of the blue, that there had been previous conversations and discussions and meetings relating to the matter with you.

My question is: What happened after you got this letter? You knew at this point at least that they were very concerned about the cafeteria.

[Witness perusing document.]

Mr. **Bresler**. Now, sir, I am sorry. Your question was——

Mr. **Levitas**. My question was in light of that letter, which indicates a rather high level of concern by GSA that the cafeteria be provided, and as I indicated previously, there is testimony that there were a number of discussions prior to that time, what did you do? Did you say, "No, we do not have to provide a cafeteria," or just what occurred?

Mr. **Bresler**. First, not to categorize the letter differently than you did, it starts off with he is concerned about eating facilities, and then on the second page of the letter, after he cites the cafeteria or cafeterias, he goes into the various eating facilities, and their concerns that they were not opened on schedule. He then further states, "The changeover from gas to electric service due to the inability to provide gas was a possibility made known to the gas company," because two of the eating facilities were due to open and could not get gas, because at that point, there was a gas cutoff of any new, commercial gas usage, and they had to go to electric.

Then he requests a definitive listing of what we will provide in the way of eating facilities, how soon they would be operational, and their adequacy in terms relative to the lease requirements as last amended. "We request this information within 2 weeks."

I would say, Mr. Chairman, that it would be our standard procedure to respond—that within the 2-week period, we would have responded to this letter.

Mr. **Levitas**. You did. I have the letter of February 7, in which you make reference—here is your response, and without objection, this letter will be made a part of the record.

Mr. **Bresler**. All right.

[The following was received for the record:]

February 7, 1972

United States of America
General Services Administration
Public Buildings Service
Washington, D. C. 20405

ATTN: Mr. Arthur O. Barton, Acting Chief

Dear Mr. Barton:

This will respond to your letter of February 4, 1972 regarding the eating facilities at the Waterside Mall.

The GSA letter of acceptance for the Waterside Mall stated, dated February 19, 1971, as follows;

> "(2) A cafeteria will be placed in operation on a phased basis, concurrently with the delivery of the Waterside Mall West Office space. This cafeteria operation will be expanded as additional space is delivered so as to provide adequate food service for the number of personnel occupying the space. The level of service which will be considered adequate shall be determined by consultation between the Government and the lessor.:

Based on current EPA occupancy and the requirements of the solicitation it appears that the present eating facilities in the center meet the necessary standards of the solicitation. However, we are equally concerned that the additional leased food facilities will be ready concurrent with your occupancy of the tower.

We have instructed the leasing agent to procure from the tenants, the information you seek and we will forward said information to you upon its receipt.

Sincerely,

Charles S. Bresler

Mr. **Levitas**. In order to simplify, I will let you categorize your response rather than remind you.

Mr. **Bresler**. [Perusing document.]

I believe the letter clearly states what went on at that point, that we responded and instructed the leasing agent to procure the tenants and the information, and I am sure that somewhere in the record, there will be another follow-up of all of the eating facilities that were leased and would be opened and their proposed dates of opening.

Mr. **Molinari**. Mr. Chairman, would you yield for one question?

Mr. **Levitas**. I would be happy to.

Mr. **Molinari**. Mr. Bresler, would you agree that a cafeteria, by your definition, would be an eating facility?

Mr. **Bresler**. Yes, sir.

Mr. **Molinari**. I yield back to the chairman.

Mr. **Levitas**. Following that letter, there were additional meetings between yourself, the Town Center Management people, and GSA people. Mr. Barton, on February 28, responded, in a very important document—it was important to you, and it was important to GSA. Now, this is after that letter that you just referred to. I will just read part of it, and I will, of course, let you have a copy, and it will be made part of the record.

He says to you:

> Recent meetings and discussions with members of my staff and yourself have materialized little substantial progress in obtaining the adequate food facilities required by lease for Waterside Mall. I am sure of your awareness of the cafeteria requirement for the project, as listed in schedule b, part 3, article 10(a), 1, 2, and 3, on page 27 of the lease solicitation. To my knowledge, there has been no agreement to change this requirement, nor is there any documentation rescinding such a requirement.

He goes on to say that he insists upon it, that it is a contractual obligation. Then the last line says:

> Until such time as tangible evidence of adherence to the aforementioned is provided and a mutual agreement reached relative to its timely provision, all future rental payments will be held in abeyance, effective March 31, 1972.

Let me furnish you a copy of this letter.

Now, I will categorize this letter, and then you can characterize it any way you like, if you see it differently. What Mr. Barton is saying is, "We have been talking about this cafeteria for a long time. It is still not there. I have written you about it. I am still not satisfied." He makes specific reference to a provision in the lease, and is at this point so concerned that he says he is going to withhold any further rent payments until the cafeteria is provided or some mutually acceptable agreement is reached about it.

Now, that letter says to me at least three things—number one, that there was clearly in this dialog an understanding that there was to be a cafeteria provided in accordance with that provision which is at page 27 of the lease, that it had not been provided, that there had been discussions about it, and that it had reached a point where they were going to take some action.

What happened, from your point of view, at that point? What did you do?

Mr. **Bresler**. I may be incorrect, sir, but I believe it was adduced at the Board of Contract Appeals that this letter was never sent.

Mr. LEVITAS. You never received that letter?

Mr. BRESLER. Am I correct on my recollection, Mr. Harrison?

Mr. HARRISON. Mr. Chairman, my recollection is that that was the letter that, according to the evidence at the Board hearing, was never sent.

Mr. LEVITAS. I do not think that is correct, Mr. Harrison. I think that letter was sent, because——

Mr. HARRISON. I could be wrong. There was a letter that was never sent that came out in the Board hearing.

Mr. LEVITAS. There was a letter at the Board hearings that was discussed that was never sent. That is not the one.

Mr. BRESLER. Well, I would presume that if I received this letter, I would have responded to it, and there must be in the record a response.

Mr. LEVITAS. I have a copy of a letter in which you responded to that letter.

Mr. BRESLER. Oh, fine. Then there was a response to the letter.

Mr. LEVITAS. There was a response to the letter. My point is that in that letter, he is identifying a specific contractual requirement for providing a cafeteria, which we have already identified, that contractual provision. He is saying, "You have not done it, and unless you make some arrangements with us for providing it, we are going to withhold rent."

Now, what did you do, aside from writing a letter back? Did you contact anybody and say, "The Government is mistreating me. This is not right. There is no such requirement." What did you do?

Mr. BRESLER. I would normally respond with a letter. There are very few letters that we receive from Government that go unanswered.

Mr. LEVITAS. Did you contact anybody—GSA or the Government, saying, "These people are going to withhold my rent, and that is not fair, it is not right. Something should be done about it?"

Mr. BRESLER. No, sir, not to my knowledge. We would normally—and I very rarely waive this requirement—that any letter from the Government similar to a letter from Congress or anybody else, will get responded to as quickly as possible, in writing, and as detailed a response, point by point, as possible.

Mr. LEVITAS. I am going to furnish you a copy of your letter of March 2, 1972, responding to that letter which you have in front of you. I would like you to take a look at it and perhaps you can refresh your memory on it a little.

Before you do that, do you remember someone named Bernie Adamac?

Mr. BRESLER. I remember the name, yes, sir. [Perusing document.] I think my response fully sets out——

Mr. LEVITAS. So you responded by saying you did not think you had to provide this cafeteria?

Mr. BRESLER. Well, I think it goes far deeper than that—I mean, not to categorize the letter any differently than what it says, but I think No. 3 on page 2 discusses a federally operated facility.

Mr. LEVITAS. And you at this point have now said that Mr. Barton's communication to you of February 28 is one to which you take exception; that as he views your obligation, and you view your obligation, they are two different things.

Mr. **Bresler**. I think so, yes, sir.

Mr. **Levitas**. All right. Mr. Adamac was project manager for GSA on this particular project. After your letter of March 2, and because of that letter, there was a meeting, which you attended, Mr. Adamac was there, and Larry Roush—do you remember Mr. Roush?

Mr. **Bresler**. I remember his name. I do not remember him personally.

Mr. **Levitas**. He was Assistant Commissioner at GSA.

Mr. **Bresler**. Oh, yes, OK.

Mr. **Levitas**. Do you recall a meeting which you attended concerning this cafeteria issue with Mr. Roush and Mr. Adamac, at which you discussed the position you had taken in your letter of March 2, and the positions that he had taken in his February 28 letter to you?

Mr. **Bresler**. I had numerous meetings, Mr. Chairman. I cannot remember specifically with who, the nature of the discussions at the meetings, and what was the outcome. Normally, what would happen at a meeting, if there was something required, I would usually memorialize it. It was always a policy of GSA never to have a meeting alone. There was normally somebody else from GSA there. In most instances, I would try to have somebody from my office present to make sure that if I misunderstood something, that somebody else would write it down. It would normally be followed up with a letter, but adequate and detailed minutes were usually kept by GSA or one of their people, and they would then follow up with a letter, and everything would be in writing.

Mr. **Levitas**. What I am getting to, Mr. Bresler, in order to help you recall what happened—in February 1972, Mr. Barton writes you what I consider a very tough letter, saying, "We are not going to pay you any more rent because you have not lived up to your lease agreement." You have responded, essentially making two contentions. One is, "Whatever our lease agreement was, we have lived up to it, and besides, we did not have an obligation to provide this cafeteria in the first place."

They were going to stop paying you the rent. That was a rather significant event, it would seem to me if I were a lessor, and somebody says, "I am not going to pay you any more rent."

I am trying to get to what occurred as you recall it, during this period of time, between February and a meeting which occurred and has been memorialized on March 30, 1972, at which this matter was discussed.

Mr. **Bresler**. I cannot add anything other than what my letter of March 2, 1972 says, and whatever may be memorialized between March 30, the meeting you are discussing. I would presume that whatever is there is what happened, and 11 years later, I just cannot change anything.

Mr. **Levitas**. You provided a version of the lease, a page from the lease, which was in dispute, which was different from the one Mr. Barton made reference to, and which did not contain the requirement that a cafeteria be provided at no cost to the Government. So far as I am able to determine, this is the first occasion since the lease was entered into over a year previously, that the issue had been raised by you that there was no such requirement.

Mr. BRESLER. If I might, Mr. Chairman, just correct something. If I may state, the lease itself is a two-page GSA form with five or six pages attached to it, none of which has any of this information that is in the February 28 letter. I believe if you look at the February 28 letter, he refers to schedule B, part 3, and if you refer to my letter of March 2, my second paragraph, it talks about "general lease specifications and requirements."

Now, just to try to clarify something to the best of my memory, I stated earlier that normally, you have got a boilerplate book of specifications which are yea thick, that covered everything. Invariably, the special requirements, such as a library, a xerox room, a laboratory, or things of that nature, would be separately treated by negotiation. When the lease was signed, the only thing mentioned of the specifications would be by referral in the lease document, saying—referring to the specifications, and all the amendments thereto and that basically would be included or referred to. So I would presume, as again, when I received this letter, the normal thing to do would be to look at schedule B, part 3, article 10, (1), (2), (3), on page 27 of the lease solicitation, which is apparently what I must have done. And that solicited this response of March 2, I would presume, and look at this differently, that the government could install their own facilities. Looking at the top of the page attached to it, "The Government shall have the right to install a food service or vending facility with the defined lease space."

My feeling was—and it was then, I believe—and again, I may be wrong in my time context, because we are talking about 11½ years ago or thereabouts—that what they were talking about was a GSI facility, and that is what I think I responded to here in my March 2 letter.

Mr. LEVITAS. Prior to your entering into negotiations with GSA for the Town Center space, had you previously received any solicitations by GSA or specifications, SFOs, from GSA in connection with other possible lease arrangements? Was this the first time you had ever had any dealings with GSA?

Mr. BRESLER. Oh, no, sir. I said I originally started dealing with GSA back in 1961.

Mr. LEVITAS. And over the years, did you receive from them copies of their solicitations and their requirements on occasion?

Mr. BRESLER. Only when we requested the full SFO, if we felt we were going to respond. Normally, if I recall correctly, in those days, the way it was was there would be an advertisement or a letter that would go out, and if you were interested or felt that you had the space—let us say they wanted 100,000 feet of space, and you did not have it, and you just would not go any further—so I would think that if we did respond, we would have gotten an SFO from them, complete with the specifications.

Mr. LEVITAS. In fact, you do know that at some point prior to July 1970, you had received other solicitation documents from GSA, hadn't you, at some point?

Mr. BRESLER. I do not know, sir. I could not be sure of the dates. I know I responded to, as I stated in my beginning remarks in response to your question that I believe that sometime in 1969 or 1970, we did respond GSA solicitation for space, but it was not this block of space.

Mr. **Levitas**. I do not think you are either understanding my question, or if you are, I do not think you are responding to it. Was this is the first time—this solicitation No. 55 that I made reference to—is this the first time you ever had in your own possession a solicitation for offers from GSA?

Mr. **Bresler**. Do you mean on March 2, or back in——

Mr. **Levitas**. In 1970.

Mr. **Bresler**. I do not believe so. I am sure I must have had them before.

Mr. **Levitas**. Sure. If you had been doing business with GSA or trying to do business with GSA over the years, at some point, you would have had to receive copies of these types of documents—not this particular one, but some others.

Mr. **Bresler**. Yes, sir.

Mr. **Levitas**. Now, at the meeting that you had with Mr. Roush, Mr. Adamac, and others, following your letter of March 2, you produced a page in one of these schedules to the lease that was different from the one GSA made reference to, in regard to what requirement existed about providing the cafeteria space, and in fact, that got to be one of the issues at the Board of Contract Appeals.

My question to you is, since this occurred, this development of a differing version of the lease that you have from the one GSA contended was in existence, somewhat over a year after the lease was entered into, and subsequent to a number of contacts between GSA and you and others of Town Center Management about providing this cafeteria at the building, my question to you is why was it a year later that you first provided GSA with a different contractual or schedule provision from the one that they had been talking about with you prior to that time?

Mr. **Bresler**. I believe it was because the question was never raised. Up until that period of time, the only thing that we were all interested in was adequate eating facilities; no mention other than the interim automatic cafeteria to service 200 or 300 people who were in the initial move-in, and that was by virtue of the fact that the eating facilities that had been leased prior to GSA entering into the lease for the office space were not ready. They were not ready because of anything that I did, or that GSA did, or that the operator—such as Marriott and all the others there, who were planning to come in. It was because of delays in construction, strikes, the change from gas to electric, which required a redoing of all the plans and their equipment and things of that nature. No mention was ever made of a cafeteria as has been categorized here.

So, up until that point, nobody ever really questioned. The big concern by everybody was what facilities are coming in that are going to serve food; how many seats would they have; what type of menu would they have—and all this was agreed in our final lease negotiation, that it would be there, and they would open as the premises would be occupied, and as they would be expanded. In other words, there would be adequate food facilities for the people there over this period of time until, I would presume, this February 28 letter, and at that point, I would presume, being a reasonable and, I would hope, an astute businessman, immediately determine what he is talking about, and then went to the March 2 letter, which responded in full, and I think, clearly states that fact that here, you wanted a dining room, and we discussed not putting a dining room in; here, whether you were going to have a GSI facility, and while you may have the right to have a GSI facility, we do not think you should have, and we think it would be a disservice to the community as well as to the food operators who are going to be there.

It was not like this was out in the boonies somewhere, like out where Atomic Energy was going to be, and there was not enough service, or when the Pentagon was built, there was no food inside, so somebody had to put something in there. This was in an urban area. There were six or seven food facilities which were either open or being opened at that time, and within walking distance, there are another five or six, from the 1,200 seats in Hogates, the Flagship, to Channel Inn, to the Gangplank—you name them, all over. So, while they were all being built and opened at the same time frame, nobody mentioned the cafeteria, other than the vending cafeteria, the automatic cafeteria, until this particular letter.

Mr. LEVITAS. How many eating facilities were being leased by Town Center at this time?

Mr. BRESLER. About seven or eight, Mr. Chairman. I guess there must have been about 800 or 900 seats, either open or planning to be open. My attorney just reminds me that in the Board of Contract Appeals hearing, there is a complete chart showing the seats, the menus, the day they opened, the type of prices, all the rest of it.

Mr. LEVITAS. And these facilities had been leased, I gather, either just prior to or subsequent to your entering into a lease with GSA?

Mr. BRESLER. To the best of my recollection, the majority—well, there was one that was there prior to it, in operation, aside from the Peoples and the other—what I call fast-food facilities—that were already located there. Most of them were signed or committed well before GSA became a tenant in the building.

Mr. LEVITAS. Were these leases flat rental leases, or were they rentals with a percentage of revenues?

Mr. BRESLER. Some are flat leases, and some are flat rate leases plus a percentage over a given figure.

Mr. LEVITAS. The suggestion has been made that it was in Town Center's interest not to see a new cafeteria come into that building, operated for Government employees, because to do so would take away from business that was otherwise going to some of these eating facilities, and either there was a percentage override in those leases which could be affected, or the very lease itself, the base payment, could be affected. It was therefore in Town Center's economic interest, regardless of any legal obligation, not to want to see another cafeteria or eating facility being installed in that building. Was that discussed with you?

Mr. BRESLER. No, sir. I would dispute—I do not want to disagree with you, sir, or the committee, or what has gone before——

Mr. LEVITAS. Not disagreement. I am just suggesting what was said to me.

Mr. BRESLER. You mentioned in your preliminary remarks a cost of $750,000 to the Government. I do not know who comes up with these numbers and where they come from. Every food facility in that complex pays rent. They provide their own utensils, they provide their own help, they pay D.C. sales taxes, they pay Federal income taxes. They pay us a per-dollar square-foot fee for the use of that particular space.

Now, if tomorrow morning, there was a market or a need for double the size of the food facilities, you can bet your bottom dollar that we could go out and find a food operator, be it Marriott, who has a place in there now, or somebody else, who would come in, outfit the place completely, and operate it.

Now, we lease space. We hope that the people who lease it serve the needs of the people who are in the vicinity, as well as those who occupy the building. So it would make no difference to us, because they all pay the minimum rent. They are all going to pay a minimum rent, they are going to pay their electricity, they are going to pay their water, they are going to pay their percentage of the real estate taxes and a percentage of the common area maintenance. So there would be no savings to us. Now, I would guarantee you, sir——

Mr. LEVITAS. Let me interrupt you, because maybe I do not understand. It is my understanding that GSA's position was that there was supposed to be an employees cafeteria built at no cost to the government, and it would be operated either by the Government or by some contractor they brought in. That facility would not be leased by Town Center to the contractor. It would be operated for the benefit of the employees who go there. Therefore, if this cafeteria, the so-called missing cafeteria, were in fact provided, it would take away business from these other facilities for which Town Management would receive no additional rent.

Mr. BRESLER. That is not my understanding, sir, and I do not believe that that was ever—that is something entirely new to me. It was never brought out at the hearing nor in any of the discussions I remember. There was only one time that I can recall, and that was in late 1975 or 1976 when an employees' group represented by a union representative insisted that they should have a GSI cafeteria, similar to what HUD had or some other government building. I believe GSA—and I may be wrong on this—advised both the Agency and the employee group that GSI could not enter into a nongovernment-owned building, and that was what was told to me. I do not know anything different, and I do not know where this information you cite came about.

Mr. HARRISON. Mr. Chairman, if I may, I believe GSA's contention at the hearing was just the opposite. I believe GSA's contention at the hearing was that GSA did not want a GSI cafeteria and that GSA did not want to operate a cafeteria, but rather, that GSA wanted TCMC to operate, or cause to be operated, a cafeteria at no cost to GSA—although it is clear that the union people—Mr. Dodson, as I recall his name was—candidly wanted a GSI cafeteria. In fact, more specifically, they wanted one just like HUD, except even cheaper.

Mr. MOLINARI. Mr. Chairman, would you yield?

Mr. LEVITAS. Yes, I would be happy to yield.

Mr. MOLINARI. Mr. Bresler, how many restaurant facilities or eating facilities do you lease, or your corporations, companies, lease in that building or near that building—within walking distance, anyway?

Mr. **Bresler**. Within the building itself, I believe there are about six or seven restaurant or eating facilities. I cannot be sure. I would have to go back and recheck. But I believe there is in the record a detailed list of the number of facilities, the number of square feet. We provided this to GSA.

Mr. **Molinari**. You haven't answered my question.

Mr. **Bresler**. I believe it is 6 or 7, and may be close to 700, maybe 600 seats, but I could be wrong.

Mr. **Molinari**. Were there any provisions in any of those leases which limited the amount of facilities, eating facilities, food facilities, that you could lease to?

Mr. **Bresler**. No, sir.

Mr. **Molinari**. So that none of the tenants sought or secured protection in their leases as to a limitation on the amount of leasing that you could lease to other, competitive——

Mr. **Bresler**. No, sir. That only came up twice in the overall—once, in a place called Harry's Liquors, who opened up a food facility inside, which was health foods, sandwiches, a delicatessen, and a wine and cheese counter. They would make up wine and cheese baskets for lunches and things of that nature—which we felt was not permitted in his lease, but we never said anything about it. And the second one was when Safeway increased their size from 20,000 to 35,000 feet, and they put a complete Safeway Food Service, where they serve fried chicken platters, spareribs, salads, and all the rest of it, and we questioned that, but we never made any to-do about it, and we gave Safeway the right to go ahead. It was not allowed in their lease; they were to operate a Safeway store only, as was Harry's to operate a liquor store only, but in both instances, we never raised the question.

Mr. **Molinari**. Are there any provisions in any of these leases, six, seven, or however many there may be, referring to facilities within the EPA structure itself?

Mr. **Bresler**. No, sir, none at all, none at all. There was one lease which we, with GSA, were negotiating with one of the operators there who, trying to respond to the union and employee demands, was going to build a GSI-type of eating facility. When I say GSI—a great, big space with nothing but tables and chairs in it, where employees could come in and brown bag it, where they could buy a Coke or juice or a beer or something like that, sit down and bring their lunch in there. That was a local operator who had operated a restaurant, and when the first question was raised, I believe in 1975 or 1976, that there was no place like this for the employees to go, and they wanted something, he tried to respond, and all he said was, "So long as you come in and buy a Coke, we will provide this space for you," and I believe there were to be 300 additional seats so that they could come in and sit down. But that was the only thing that ever came about, sir.

Mr. **Molinari**. Can you give us an idea as to the time sequence with reference to these leases? Were the leases with these food chains, the six or seven, entered in to before the GSA lease, or after?

Mr. **Bresler**. I would say a few were entered into before—both, both before and after.

Mr. Molinari. Can you give me an idea of how many were entered into before the GSA lease?

Mr. Bresler. I would say perhaps two to three were before the GSA lease, and then as the building started to fill up and come toward completion, there then became an interest by more food service operators to come in to service the market area.

Mr. Molinari. According to your recollection, did you offer them the space that was heretofore shown to you as "Cafeteria," identified on that original offering? Did you offer that space to these prospective lessees as potential space for leasing and operating the food facilities?

Mr. Bresler. If you are referring to the document that is marked, "Waterside Mall II," I do not believe that space was ever offered to anybody in that configuration. I think this was a preliminary back in about 1968 or 1969, when the second floor was planned as a commercial type of use.

Mr. Molinari. Did you offer any space in the EPA configuration to any prospective lessee for the purpose of constructing and operating a food chain?

Mr. Bresler. Not to my knowledge, sir. All the food facilities were restricted to the first floor, for a number of reasons: (1) service, and (2) food facilities, by their very nature, create a lot of trash and offal that must be disposed of, and you try not to mix it up with the office occupancy. In fact, one of the big problems we do have is cleanliness within blind facilities that are located inside an office building and the servicing of those—bringing up cases of Cokes in the elevators, or a basketful of ice, and all of the other things that tend to tie up the elevators for business occupancy, can damage them, also.

Mr. Molinari. That space that is identified in the exhibit there as "Cafeteria," who is occupying that at the present time? What use is it?

Mr. Bresler. It was the offices of the Old West Commission and another agency of GSA—I cannot recall—at one time, and then their lease ran out, and we occupy a portion of it. The balance is occupied by a computer service company.

Mr. Molinari. When you say "we," who are you referring to?

Mr. Bresler. Town Center Management Co., and Bresler & Reiner, Inc. The exact configuration of this does not exist as it is shown here. It is far different.

Mr. Molinari. I understand.

Mr. Bresler. As most preliminaries are, these are what we call the ideal types of layouts, but in your final building, it sometimes comes out far different than that.

Mr. Molinari. I find it rather unusual that none of the prospective tenants would have been concerned about the amount of competition in the normal marketplace. It would be a provision that a lessee would want, to limit the amount of competition that they would have, so they would know they would make a success of their business. And yet, it is your testimony that that did not occur with any of your tenants.

Mr. Bresler. No, and for a number of reasons, Mr. Molinari. One, we could not discriminate against anybody. No. 2, we had to give preemptive rights to anyone who wanted to move in who had been displaced in another area, be it a food service or anything else. And No. 3, I believe—and my attorney can correct me—the FTC and the courts have come up with a number of decisions which do not allow the landlord to restrict type of usage anymore. In other words, if you come in, and your money is green, and you do what is legally allowed within the terms of the law, we must go ahead and rent to you. Now, we can, and by nature of the building itself restrict certain usage. It may not have the number of exits required for a certain type of use; it may not have the mechanical systems available—but if you as a potential tenant are willing to make that investment to come in, we cannot deny you that. Now, many, many tenants today—the commercial market has become much more sophisticated where the landlord in his lease does put a provision whereby if you do not increase your business by the CPI so that the landlord is receiving an increase in rent each year based on the overages or the dollar volume you are doing, he can terminate the lease, or you are forced to pay that amount. But there are provisions like that that I believe—I do not know whether they have been tested yet or not, Marion, but you can correct me—so that is how that works.

Mr. MOLINARI. Is it your testimony that these provisions in the FTC regulations were in effect at the time this building was constructed?

Mr. BRESLER. I do not know whether they were or they were not. But we never put into a lease—and as a matter of fact, we just do not put any restrictive covenants in leases. We do not think it is good business, and we just do not operate like that. And if somebody came to us and told us, "We want a lease of that nature," we would be pretty hard-pressed to agree. Now, I would grant you that if the Government came in and was going to rent one million feet of space and said, "We do not want a go-go joint in here," we very well may agree with the Government that if there was a possible way, we could do it, and you indemnified us to the fact that if Mr. Harrison came along and opened a go-go joint, and we would not let him, and he sued us, you would defend us—otherwise, we would be very careful on that.

Mr. MOLINARI. Mr. Harrison, I am surprised at you.

Mr. HARRISON. I really did not have that in mind, Mr. Molinari, but lawyers get into strange places sometimes.

Mr. MOLINARI. I yield back my time, Mr. Chairman.

Mr. LEVITAS. Mr. Bresler, subsequent to the meeting that you had with Mr. Adamec and Mr. Roush, concerning Mr. Barton's threat to withhold rent, you received a letter from Mr. Roush in which he says to you:

> Subsequent to our meeting regarding the lease requirement for a cafeteria facility, I directed the entire procedure and related documents to be reviewed in view of this development and the fact that other questions bear some indepth research. We have determined that the Government will not pursue the actions discussed in our letter dated February 28, 1972 until all current studies are completed.

Do you recall receiving that letter?

Mr. BRESLER. I am sure I did. It sounds familiar to me, yes.

Mr. LEVITAS. Did you have any discussions with any GSA officials or others between the February 28 and April 19 date of this letter, other than Mr. Roush, Mr. Barton, Mr. Adamec, concerning your desire to be relieved from that obligation or to countermand Mr. Barton's proposal to withhold rent?

Mr. BRESLER. Not to my knowledge, sir. I think I clearly stated our position in the March 2 letter.

Mr. LEVITAS. Later on in 1976 or thereabouts, the contracting officer made a determination that you were in fact required to provide a cafeteria without cost, consistent with Mr. Barton's position in the February 28, 1972 letter. That was their position, from which you took appeal.

Do you recall that?

Mr. BRESLER. Yes.

Mr. LEVITAS. In your Notice of Appeal—and I will furnish you a copy of it if you so desire—one of the statements that you make as a grounds for appeal is: "The appellant claims that GSA has stated, 'The cafeteria requirement was deleted orally as the lessor met our requirements for providing food facilities in the Waterside Shopping Mall.'" What I just read was one of the grounds of your appeal.

My question is this: with whom was such an arrangement, such a verbal arrangement, made? What officials at GSA did you make that agreement with?

Mr. BRESLER. I cannot recall, sir.

Mr. LEVITAS. Was it your knowledge or information or belief that there had been such a deletion made orally?

Mr. BRESLER. I do not have the exact language that you are reading from there. I would appreciate if I could take a look at it.

Mr. LEVITAS. Would you provide the witness a copy of this Notice of Appeal?

[Document handed to witness.]

Mr. BRESLER. [Perusing document.]

Mr. LEVITAS. Do you see on the first page there of the Notice of Appeal, the language to which I made reference?

Mr. BRESLER. Yes. This document says, "See attachment No. 1 and exhibits." I see the attachment No. 1 here, but I do not see the exhibits. There may be something there that refreshes my memory.

Mr. LEVITAS. I am referring on page 1 of the Notice of Appeal to the language which I read to you.

Mr. BRESLER. Yes, sir, and it says, "See attachment No. 1 and exhibits," down here.

Mr. LEVITAS. That is not the language I am referring to.

Mr. BRESLER. I think that is referring to the two statements up above. I do not know, Mr. Chairman.

Mr. LEVITAS. Would you hand that back to me, please?

Mr. BRESLER. Yes.

Mr. LEVITAS. Let me read it to you.

Mr. BRESLER. I can see what it says, sir, and I believe that——

Mr. LEVITAS. That is a copy of your document.

Mr. BRESLER. That is correct.

Mr. LEVITAS. And I am just asking you—I am simply asking you—it says, "Appellant claims that GSA has stated, 'The cafeteria requirement was deleted orally as the lessor met our requirements for providing food facilities in the Waterside Shopping Mall.'"

My question is, in your document, I am asking you with whom such an oral agreement was made.

Mr. **Bresler**. I cannot recall, sir. I believe I am quoting from a GSA statement there that was attached to that document. That is what I am saying. I believe GSA put a letter out. I may be wrong on that.

Mr. **Levitas**. Did you have an agreement with GSA to delete the requirement for the cafeteria?

Mr. **Bresler**. We had an agreement with GSA that we would provide cafeteria/eating/food facilities adequate to meet the needs of the building by agreement. Over the period of years, we felt that we had reached such an agreement with the various people we dealt with at GSA, and the matter was dropped in 1972 or thereabouts and never heard of again until 1975 or 1976.

Mr. **Levitas**. I understand that. That is how the Board of Contract Appeals finally concluded that they had waived the rights they had under the lease. I am trying to find out who at GSA did this.

Mr. **Bresler**. Oh, I could not tell you, sir.

Mr. **Levitas**. Did you have an agreement with GSA that deleted the requirement for a cafeteria "* * * as the lessor met our requirements for the providing of food facilities"?

Mr. **Bresler**. I believe that I did, sir, yes.

Mr. **Levitas**. Do you recall with whom you made that agreement?

Mr. **Bresler**. No, sir, I do not.

Mr. **Levitas**. Now, I suppose the question arises at this point whether, if there was an agreement to delete that requirement, there must have been an acknowledgment that there was a requirement to begin with.

Mr. **Bresler**. I do not understand that there was a requirement. My letter of acceptance, as I recall it, my letter of agreement with them was that we would provide adequate food facilities and such food facilities would be open on a phased basis, in agreement with GSA or their representatives, to satisfy the needs, and if it was not, they would then make such a claim, and we would respond. During the period of the initial construction and occupancy, they did make such claims that the food services were not adequate. We then saw to it that we did open the additional facilities that were promised to them; they were opened; they did business, and we never heard another word, and they fully accepted the buildings in 1973. If there had been any question, it would have appeared to me, in a normal business sense and in doing business with the Government—and we have this all the time—where they will accept space, or make the contract valid, I guess would be the way you would do it, but say, "However, you have not provided us with three wall plugs and two Xerox outlets or a nurses' quarters," or something that we agreed to do, and therefore, "You have 30 days to do that." They never did that to us. "Punch list" is what the word is, and then they have a form—I cannot recall the form, Mr. Chairman, but there is a form that GSA does execute when they occupy space that defines omissions: These are not major, but this is major, and we will not accept, or we will not fully sign the lease until you supply those.

Mr. **Levitas**. I understand that, and I think the record is clear. One of the concerns we have on this committee is the fact that

GSA, claiming to have the right, did not do anything about it between 1972 and 1976, and the Board of Contract Appeals felt that that constituted, in fact, a waiver. I am simply trying to ascertain who was responsible for all this at GSA, so that we can make sure it does not happen again.

So therefore, in your appeal, you claim that there was an oral deletion of the contract requirements because you had met their requirements for providing the facilities. Who did you make that agreement with?

Was it Mr. Roush?

Mr. **Bresler**. No. I don't think so. I do not believe Mr. Roush ever got into it other than that one meeting, if there was a meeting——

Mr. **Levitas**. Barton?

Mr. **Bresler**. It would be whoever was contracting at that time.

One of the difficulties, Mr. Chairman, that you run into, unlike a normal business relationship—because the operation of the Government is so fraught with regulation and reorganization—is that you never know who you are really dealing with and who has authority to do what and how it is done. That is one of the reasons we try to get into writing as much as possible and not have a meeting with somebody that is not recorded and have to go through this 2 or 3 years later and say, "Really, what happened at that point and why isn't your recollection better?"

GSA constantly was changing the people we dealt with. It was Mr. Adamec; next week, it might be Mr. Eschbacher; then he moved on to something else, and we had a third party involved. The lease was negotiated by one group of people, and you would be dealing with another group of people. If you then wanted to collect your money, you would go to a third party. If you had a dispute over something, you would go to a whole different office, and none of them seemed to know what the other hand was doing. And it was not the intent of your lessor or the intent of those who do business with Government, in my estimation, to try to do anything to Government. We are taxpayers. We are people in the community who try to do our job in the best way possible. But it is very difficult to do business with the Government and to know who you are really doing business with. It is difficult to get a decision out of them.

Mr. **Levitas**. We have a vote going on, and we are going to have to take a 10- or 15-minute break. We will resume the hearing at that point.

The subcommittee will stand in recess for 15 minutes.

[Recess.]

Mr. **Levitas**. The subcommittee will please come to order.

We will resume the hearing.

I just have a few more questions, Mr. Bresler, and hopefully, we can wind this up in relatively short order.

Mr. Molinari and I have been asking some questions about the other facilities, eating facilities, that were in existence in the Waterside Mall. In your testimony, as well as other testimony in the record, it appeared that GSA had said to you at some point that the eating facilities were adequate to meet whatever needs there were.

In your testimony before the Board of Contract Appeals, this question and answer occurred:

> Mr. Bresler, during the period of discussions, 1971, 1972, and perhaps the beginning of 1973, did GSA personnel at any time tell you or suggest to you that the restaurants, cafeterias, whatever they may be denominated, which were in the building and which were occurring in the building, were sufficient to meet the requirements of the lease?

Your answer was "yes."

My question is, again, in order to find out what was going on at the GSA, and what was occurring, what persons, what individuals, did you have those discussions with that your testimony relates to?

Mr. BRESLER. I cannot recall, Mr. Chairman. I am sure it must have been one of the liaison people, or a group. I never met alone with any GSA official that I can recall, nor with any agency representative. They always came in great numbers, and they would attend meetings on a regular basis. They would also check out all the various facets of the lease and the facilities, and I cannot recall which one individually said it. The question never arose again, and everybody was happy because we did, although at a delayed pace, open all the restaurant facilities and eating facilities that we promised in our previous letters, and the whole matter dropped.

Mr. LEVITAS. In your position before GSA, and before the Board, there were different versions of a page in the schedule to the lease itself. GSA had one version. You had another version.

The administrative law judge, in his decision, stated as follows; I want to read this short paragraph:

> Appellant's President, that is you, testified that he did not examine paragraph 10 during the negotiations, or look at any lease provisions until the problem developed. Thus the record is unclear as to whether appellant had firsthand knowledge as to which page 27 and paragraph 10 was present when appellant received the solicitation. More importantly, the appellant's interpretation appears to be an amalgamation of two different solicitations.

The opinion, however, went on to say:

> Thus, it appears that appellant's amalgamated portions of two different solicitations, solicitation No. 55, and perhaps the previous one, described as solicitation No. 40.

Now, I would like for you to explain to me your version of how that amalgamation came about.

Mr. BRESLER. Well, I cannot agree with the judge. I think it is just the reverse, Mr. Chairman.

If you look at the solicitations that you handed me, and I will refer it back to you, and look at the printed document, you will see that all of the printing, and even the typing, is on one side, and in the middle of it there is a freshly typed page of a different typewriter at a different time, and it does not even follow in true order to the next two pages, and then goes into the following page.

I will be glad to pass it back to you.

Mr. LEVITAS. I am familiar with that.

Mr. BRESLER. I personally believe that somebody, as an afterthought, because the cafeteria incident was never brought up, or food facilities was never brought up, in my recollection, until the final negotiation of the lease—when I say final negotiation, after we had reduced our price, after the Agency, GSA, I mean, had taken the additional space, and said: "we do not want that option but we will take it all."

Somebody came in, in my own belief—I could be wrong—and said, "hey, we need this cafeteria, and we need eating facilities because somebody raised the question."

At that same time there was a big to-do over the Nassif Building, which was DOT, and they are putting in a big eating facility on the top floor, that was being done and was being run by the Coast Guard. I think that is what, in my own mind, happened.

We did not pay any mind to it because our letter of acceptance, which was modified by us with agreement with the Agency, was to the effect that there would be cafeteria/eating facilities, or eating/food facilities—I cannot remember the exact words that we interlineated in at our final negotiation session, and I fully explained to them then, and gave them a list of the eating facilities, and said, "fine, if these do not meet your requirements, we will be glad to increase them" but we did not know then their requirements or the number of employees.

As an astute businessman, it would be—and I think I am astute—I could not agree to something that was so vague. How would I know how many people would be in occupancy, how many meals to be served, how big it should be, where it should be, and all of the rest of it? That is an open book. That is strictly open to interpretation, and it makes for nothing but a disagreement between the parties.

So the acceptance letter which I had signed, which never appeared, which was interlineated, said that we will supply you—and my other letter which was an amendment to the lease solicitation, stated that if you want anything beyond the normal office space, and we are cutting our price because we are only discussing office space with you, Mr. Government—we will be glad to put it in wherever it is practicable, if we cannot put it in, we cannot put it in, if it meets the code, so long as you pay for it.

So the truth of the matter is if you want a cafeteria, or restaurant facility that covers 100,000 feet, and you want to pay for it, you can go ahead and do it, so long as there is no problem.

Now, you are asking me to go back in time and try to think what happened, and try to put it in context from what a reasonable person would presume.

I would say, so long as the restaurant facilities were opening, the chairs were there, and people were moving in, nobody raised any problem. There was food. It was not GSI-type of food. It was a Marriott type of lunch. It was Village Inn. There were three or four—a Blimpie's chain. There were three or four different ones. It was not one facility. It was a number of different facilities. You can get that today in modern shopping centers, food core types.

At that point, when the building became fully occupied, there was no more problem. Everybody was eating, and those that were brown-bagging it, were brown-bagging, and that was the end of it. To me that is what happened.

Mr. Levitas. The other interpretation that would explain the type difference is that there were negotiations about providing the cafeteria. In fact, there has been testimony that the figure of 10,000 to 20,000 square feet of cafeteria space would be provided, preceded the final execution of the lease, and that after these conversations with you, there was a modification made in these specifications in the schedule that related to this matter, and that is why page 27, section 10, was done differently than the rest of it, in order to take into account the results of the negotiations about the cafeteria space. That was part of the schedule at the time the lease was actually signed.

Mr. BRESLER. I cannot respond to that, because I know nothing about that, Mr. Chairman. The only thing I know is that if the committee's concern today is that—today, when we sign a lease, GSA attaches the SFO to the lease, and each page is initialed by both parties, that it is to be made a part of the document, that that is in there, and there be no question about it.

Mr. LEVITAS. I understand that. We have talked to GSA at length.

Mr. BRESLER. I do not know how it happened, other than that.

Mr. LEVITAS. I asked my question of you earlier. What was your explanation of the amalgamation that the administrative law judge described in his opinion, and you have given me your interpretation.

Mr. BRESLER. I do not think there was an amalgamation. I believe it was amalgamated on the other end, frankly.

Mr. LEVITAS. Did you have any dealings, or any discussions with Mr. Roush about this matter, subsequent to that letter he wrote you on April 19?

Mr. BRESLER. I do not recall any.

Mr. LEVITAS. Did you have any discussions about the cafeteria with a Mr. Kunzig?

Mr. BRESLER. No, sir.

Mr. LEVITAS. Did you have any discussions about the cafeteria with a Mr. Sampson?

Mr. BRESLER. No, sir.

Mr. LEVITAS. I have no further questions at this time.

Mr. Molinari.

Mr. MOLINARI. Mr. Bresler, you mentioned you started negotiating leases with GSA in the early 1960s?

Mr. BRESLER. Yes, sir.

Mr. MOLINARI. Could you give the subcommittee an idea of how many leases you entered into with GSA since that time?

Mr. BRESLER. I would say maybe three, four, five. I really cannot tell you. If you consider a particular building a single lease, then no more than two. However, in one building—two buildings that GSA had leased from us, there were a series of leases over a period of time. One was a renewal. So that was——

Mr. MOLINARI. Let me try and clarify. Instead of talking about buildings, let us talk about leases.

Approximately how many leases have you entered into, either on behalf of yourself, the corporation, officer, or a company, with the U.S. Government, referring to leases in Washington, D.C.?

Mr. BRESLER. I would say about six to eight, plus numerous addendums and modifications, and additions to a base lease.

Mr. MOLINARI. Would these all have preceded the lease with EPA, or EPA space?

Mr. **Bresler**. No, sir. I would say three of them preceded the EPA space.

Mr. **Molinari**. In any of the other leases, other than the one we are discussing today, was there any provision for a cafeteria, or an eating facility?

Mr. **Bresler**. None to my knowledge, sir.

Mr. **Molinari**. Did you ever have a problem with any of the leases with respect to an interpretation of a provision, other than the one we are talking about here?

Mr. **Bresler**. Yes. There have been normal landlord-tenant problems, as far as interpretations go, most of which would normally work out in meetings. This is the first time I had ever been to a court—I mean to a Board of Contract Appeals, I am sorry, the Board of Contract Appeals, on any issue.

Normally most problems were resolved between the agency or GSA and the landlord, or the landlord's representatives.

Mr. **Molinari**. Would you mind giving the subcommittee references as to some of those areas of disagreement you had with respect to other leases?

Mr. **Bresler**. Frankly, Mr. Molinari, I just cannot recall. They were inconsequential. They may be the distance from an exit. It may have been the way a building was configured by the agency. It may have been a request for certain type of services. It may have been the level of services provided, such as cleaning, things of that nature.

Mr. **Molinari**. I am not interested in what we might call insignificant items. I am talking of items of a more substantive nature, whether it was a serious breakdown, and where in fact it required extensive negotiations between yourself and them.

Mr. **Bresler**. No, I cannot recall anything of that nature.

Mr. **Molinari**. We have heard a lot of testimony today, and there has been a lot in the past and I would like to review one or two basic questions, so I can get straight in my own mind what happened or did not happen.

Was there a time when you had agreed to provide a cafeteria or eating facility as part of your leaseholding agreement with GSA?

Mr. **Bresler**. Yes.

Mr. **Molinari**. And was that to be provided, according to your recollection, free of charge, no rent to the Government, as part of the consideration for renting additional space?

Mr. **Bresler**. I did not believe it would be part of the consideration for renting additional space. I believed it would be sufficient eating facilities in or about the premises to satisfy the number of employees that ultimately would take occupancy in the premises.

Mr. **Molinari**. The point I am trying to get at, at what point in time was it your understanding that you would provide that eating facility or cafeteria, whatever we call it, as part of a leaseholding agreement, that is, you were not getting paid per-square-foot for that space being provided at no additional charge to the U.S. Government? At one point was there an agreement to that?

Mr. **Bresler**. My understanding was that there were two separate agreements. One was there would be sufficient eating facilities within the premises to satisfy the needs of the Government, at no cost to the Government, in other words, by independent operators, in nongovernment leased space.

Second, that there was the ability that if the Government so desired, that they could take any portion of their space that they wanted, and to put in eating facilities for their own uses, at their cost and expense, and to operate on their own, such as the executive dining room——

Mr. **Molinari**. Let me interrupt you. We are heading down a road I am not trying to explore.

What I am trying to determine—there seems to be a reference throughout here that there was an agreement at one time that you would provide the space that GSA claims you were obligated to provide without any per-square-foot charge, for a cafeteria, and my impression of your intention was that it was an oral change of that agreement in subsequent negotiations, as the building went up: That that was changed, am I correct in that assumption?

Mr. **Bresler**. I can only refer to the letter I signed.

Mr. **Molinari**. I am not interested in the letter. I am interested in your independent recollection today. Was there an agreement, at any point in time, that you were supposed to provide a cafeteria, and is it your position that there was such an agreement, and that was changed by a subsequent oral agreement?

Mr. **Bresler**. No, I do not think so. I think the level of service which we agreed to, which would be determined by consultation between the Government and the lessor——

Mr. **Molinari**. I am not concerned about the level of service. That is another question, as you pointed out.

What I am trying to determine is if there was a point in time when you agreed to give a cafeteria, as the Government's position was, at no additional charge, but that it was changed by an oral agreement, so that you no longer had the obligation?

Mr. **Bresler**. Not as you have phrased it, no, sir.

Mr. **Molinari**. So it is your position that at no time were you obligated, during the course of negotiations, to provide a cafeteria at no charge?

Mr. **Bresler**. I would have to go again back to what it states in the letter we signed.

Mr. **Molinari**. The letters we have in evidence. What I am trying to get to is to see what your independent recollection is today.

Mr. **Bresler**. Today it is no different than what was in the letter, that we were to provide a cafeteria, restaurant, eating food facilities on a phased basis, with delivery of the mall, and operation will be expanded as additional space is delivered, so as to provide adequate food services for the number of persons now occupying the space.

The level of service which will be considered adequate shall be determined by consultation with the Government and the lessor.

Now, at some point in time the Government, I believe, in the case before the Contract Appeals——

Mr. **Levitas**. Excuse me, Mr. Bresler. I do not have a copy of that letter you just read from.

Mr. **Bresler**. It is the one dated February 19, 1970.

Mr. **Levitas**. February 19?

Mr. **Bresler**. 1971, the one that I signed.

Mr. **Levitas**. Thank you very much.

Mr. **Molinari**. Now, there, when you accepted the offer of GSA, you agreed to provide—you say a cafeteria will be placed in operation——

Mr. **Bresler**. Cafeteria, restaurant, eating/food facilities.

Mr. **Levitas**. That is not the letter I have.

Mr. **Molinari**. February 19, 1971?

Mr. **Bresler**. Yes. May I look at the letter you are referring to? Is it signed by me?

Mr. **Harrison**. There is one that says "S", and then Charles S. Bresler, but that is not the signature.

Mr. **Bresler**. That is not the letter that was signed. That was the letter they attempted to enter into the record at the Court of Claims.

Mr. **Molinari**. Would you please show this to the witness, and the attorney for the witness?

Mr. **Bresler**. That is not the letter.

Mr. **Molinari**. That is not your signature?

Mr. **Bresler**. No, and the dates are incorrect. Whoever did this did it incorrectly; I will tell you that.

Mr. **Molinari**. Did you have anybody that was employed by you that was involved in the negotiation of this lease?

Mr. **Bresler**. No, sir. Well, there was an attorney that was at a couple of the sessions, but——

Mr. **Molinari**. This is a conformed copy. When somebody conforms a copy and puts a slash, "S", slash, that does not mean that they are indicating that it is your signature. What it would indicate to me as an attorney is that there was a copy signed by Charles S. Bresler, not necessarily having the same signature.

Mr. **Bresler**. I do not want to correct you, sir, disagree with you, but my letter, for example, on page 2 of that letter, the third paragraph down, "my agreement says to be delivered no later than January 1, 1972." That letter talks to 1973, a year later.

Mr. **Molinari**. So that we not only had the question here of a different page 27, but we have two different letters dated February 19, 1971.

Mr. **Bresler**. I cannot speak to that letter. That looks like an agency copy of the letter that has been signed by me. My signature has none of all of what I call Government gobbledygook, with the various signatures and approvals and everything. It is in my own handwriting, and my own initials.

Mr. **Molinari**. Is it possible that your attorney might have conformed this copy?

Mr. **Bresler**. No, sir.

Mr. **Molinari**. Why would that not be possible?

Mr. **Bresler**. Because my signature is on the original, the one that I signed.

Mr. **Levitas**. What you are reading from, Mr. Bresler, is a letter from you to GSA?

Mr. **Bresler**. I am reading from the letter GSA sent accepting the lease. They handed it to me. We renegotiated right there on the spot. We penciled in dates, and all of these things that are on the side there, my initials, the date it was signed, February 23, 1971, the space to be delivered not later than January 1, 1972.

Mr. **Molinari**. Mr. Harrison, may I ask you a question? Is this the letter you made reference to this morning, where there was a different letter? Is this the one you are referring to?

Mr. **Harrison**. It may be. I thought it was the one we were then talking about. But this one, one letter contains on page 2 the actual Charles S. Bresler signature. Charles S. Bresler, president, in what he says is his handwriting.

Then, on pages 1 and 2, there are a couple of interlineations and his initials, and also what appears to be the initials of somebody else, and judging by the initials, I take it to be H. D. Harvell of GSA. Then the copy is obviously GSA file copy, because it has down at the bottom the esoteric information that only appears on a file copy, namely, the designation of the author, Doris Frankenfield, her extension, a list of three or four or five concurrences, another collection of GSA initials, and then the GSA file copy also has interlineations, and the interlineations are all in one handwriting, and I suppose they purport to copy the interlineations on the original.

The only difference is in at least two places I see they are wrong. On page 1 there is an omission, and on page 2 there is a January 2, 1973 date, instead of January 2, 1972.

Mr. **Molinari**. Is there an exhibit number on the copy of the letter you have there at the bottom of the page?

Mr. **Harrison**. In the lower left-hand corner there is what I take to say PRS-219 but I do not think that is an exhibit number.

Mr. **Molinari**. Could you look at the document that precedes that document, Mr. Harrison?

Mr. **Harrison**. The copy actually signed by Mr. Bresler?

Mr. **Molinari**. The one prior to that. I am trying to see if there is an identification number or exhibit number on there.

Mr. **Harrison**. It has none.

Mr. **Molinari**. How about the document that follows, subsequent to that?

Mr. **Harrison**. I just have the two.

Mr. **Bresler**. I might state, a copy of that was provided to me with this great big stack of documents you have.

Mr. **Molinari**. But we have a discrepancy here and we are trying to determine how that discrepancy occurred.

Mr. **Bresler**. I am sorry, sir.

Mr. **Molinari**. Who represented you, Mr. Bresler? You mentioned you had an attorney.

Mr. **Bresler**. In the lease negotiations, actually no one represented me. Finally, everything was signed by myself. During the trial—at the hearing, rather, before the Contract Appeals Board, it was adduced that in the original negotiations, Mr. Richey did some legal work for me at that particular time.

Mr. **Molinari**. At what particular time?

Mr. **Bresler**. During the original negotiations, the preliminary negotiations.

Mr. **Molinari**. I am confused. I thought you said you only had an attorney represent you before the Board of Contract Appeals?

Mr. **Bresler**. That is correct. Nobody represented me in the actual negotiation and signing of the lease. At one meeting or two meetings a Mr. Richey did appear on my behalf.

Mr. **Molinari**. I have a copy of a letter I am looking at dated February 12, 1971 which is on the stationery of Richey & Clancy and this letter purports to forward to the Honorable Loy M. Shipp, Assistant Commissioner of Public Buildings Service, GSA, a copy of the amendment to the original bid for space and he says, and I quote:

"I believe the attached document executed by Mr. Bresler conforms to the discussions and negotiations we have had with you and your staff."

Now, that does not seem to correspond to what you were telling this subcommittee.

Mr. **Bresler**. As far as what?

Mr. **Molinari**. That you negotiated yourself and you did not have an attorney that negotiated for you.

Mr. **Bresler**. I am talking when this particular February 19 letter was signed on the 23d of February; I do not believe a lawyer was with me at the time.

Mr. **Molinari**. That is not what I asked you before. What I was asking you was did you have an attorney represent you in the negotiations and execution of the lease?

Mr. **Bresler**. Not in the execution, no. He was there for two sessions, I believe, in January and in early February, and then he got busy doing something else. But the final was by myself, to the best of my recollection.

Mr. **Molinari**. But you have a recollection of his telling you that he was forwarding amendments to the original bid on your behalf to GSA?

Mr. **Bresler**. Yes, yes. That was fully discussed in meetings with GSA as to what was finally agreed on. I believe there is a long letter which amends the SFO and amends our prior agreement and is referred to in that February 19 letter.

Mr. **Molinari**. Did Mr. Richey get actively involved in the negotiations that took place from time to time with GSA and their attorneys?

Mr. **Bresler**. You mean after the signing or before?

Mr. **Molinari**. Before.

Mr. **Bresler**. Only, to my recollection, the two appearances he made.

Mr. **Molinari**. How many appearances were there altogether that he may have missed?

Mr. **Bresler**. I could not be sure. Maybe three or four. I think there may have been three or four negotiating sessions between the time of our submission and the time of the final planning of the letter of understanding or whatever—the letter of acceptance.

There were a number of meetings that were held on the site. The GSA representatives sent down appraisers, sent down health and safety people, fire prevention people, building inspectors. We had to provide them with detailed plans.

Mr. **Molinari**. These would not have been negotiations. These would have been talking about specifications they wanted in the design of the building.

Mr. **Bresler**. Yes.

Mr. **Molinari**. Would it be safe to say that you did not deem it advisable to bring a lawyer with you?

Mr. **Bresler**. I do not believe he was at any of those sessions. I just cannot recall.

I will be honest, during the course of the hearing I had even forgotten he appeared.

Mr. **Molinari**. Was it your practice in various leases you had entered into and negotiated with the GSA to have an attorney present?

Mr. **Bresler**. No, sir, as a matter of fact—with all due respect to all of you attorneys here, Mr. Zeckendorn had a big picture on his wall and it showed the office and the door was open and the conference room was a mess and there were papers on the floor and people came out with their jackets off and all a mess and the caption said two lawyers killed the deal. With all due respect to the legal profession.

I have found that in a business negotiation, it is best that the businessmen handle the business aspects of it. We then go to an attorney, either afterward or before, to memorialize or to put in proper form and in all the instances, my attorney and your attorney, after they agree, and when you look back on it and your lawyer says it means one thing and my lawyer says it means another thing and then a judge says it does not mean either, and forces them into a backroom to settle—I am not being facetious——

Mr. **Molinari**. I am not being facetious either. Then why do you have an attorney here today?

Mr. **Bresler**. Very simply; because he represented me at the hearing before the Board of Contract Appeals and he is knowledgeable about what went on there and my memory needs to be jogged. He has complete files. I do not.

Mr. **Molinari**. He did not kill the deal for you?

Mr. **Bresler**. No; as a matter of fact, he represented us and represented us very well and my own son is an attorney and I have to respect what you gentlemen do. But as I say, for business purposes, I cannot negotiate a business deal with an attorney because they raise so many questions as to a comma or a semicolon or just what it is, that before you get in there, you are confused.

Mr. **Molinari**. I wish somebody had raised a question about which page 27 was to be inserted. Maybe we would not be here today.

Mr. **Bresler**. And perhaps if an attorney had written that February 19 letter which says what it was, it may not have been as difficult to understand as to what we agreed to or what would be the method of coming to an agreement. I know full well today—and hindsight is nice—that I would never sign a letter like that again, that it would have to be that the eating facility shall be so big for each person involved and a dozen other things that would cover both of us so that we would not have this problem at a later point.

Mr. **Molinari**. Mr. Bresler, did Mr. Richey represent you on any occasion prior to this one?

Mr. **Bresler**. Yes; Mr. Richey did title work. He did title work and in many instances he would clear title and he represented a title company.

Mr. **Molinari**. You would call him a real estate lawyer?

Mr. **Bresler**. Yes.

Mr. **Molinari**. So he represented you in real estate affairs, did he?

Mr. **Bresler**. That is correct.

Mr. **Molinari**. And he did represent you prior to this occasion?

Mr. **Bresler**. Yes, sir.

Mr. **Molinari**. The letter I made reference to before, which was dated February 12, in the last paragraph he says to Mr. Shipp, "in closing, let me suggest that for myself I would like to state that I have appreciated and respected the highly professional and careful manner in which you and your staff have conducted the negotiations to date."

Would you agree with that assessment?

Mr. **Bresler**. I can agree with it and I can state fully and openly that in all my dealings with GSA, I have found them to be dedicated, as a rule, dedicated and honorable people who try very hard to do their job within the constraints put on them.

Having served in a legislative and administrative capacity in Government and having the benefit of being in the business world, I can tell you that in most instances I have found the GSA personnel to be highly motivated and extremely dedicated. Part of the problem is the sheer bureaucracy and the checks and balances that you have to go through.

So I have no problem with anything that ever appeared in my dealings with GSA. I find once in a while you get somebody who goes off the deep end and thinks they are king of the mountain. But sooner or later, reasonable people and reasonable businessmen can agree to anything.

Mr. **Molinari**. Did you ever threaten to sue GSA?

Mr. **Bresler**. I may have, yes, I may have.

Mr. **Molinari**. Specifically, what I am trying to do—and I am almost finished with my questions—as the Chairman indicated before, we are trying to assess not only your role but what GSA did or did not do here so that we can learn from past errors and hopefully adopt some remedial steps to prevent the occurrence in the future. We have a statement from your then attorney which is complimenting the GSA officials for the careful professional manner in which they negotiated and conducted the negotiation. And yet, it seems to me that in reviewing it, there were some very serious gaps. We have more than one document which is at variance between your position and the position that was adopted by GSA. We have two different page 27s. We have two different letters dated February 19, 1971, both of which—those letters indicate you were a signator and yet the text is somewhat different.

So I am at a loss to understand how is it that your attorney is complimenting them on the careful manner in which they handled the matter and yet we end up with documents that are absolutely contradictory.

So I suppose my last question to you would be you mentioned before you had a number of difficulties with them because of the bureaucracy involved. What is your last dealing with the GSA?

Mr. **Bresler**. Right now?

Mr. **Molinari**. When was the last one?

Mr. BRESLER. I guess about 3 weeks ago, to remove an airconditioner that was put in by the agency.

Mr. MOLINARI. I am talking about a leasing agreement.

Mr. BRESLER. About 1 year ago; 1 year, 1½ years ago.

Mr. MOLINARI. With whom is that?

Mr. BRESLER. With the leasing division. I believe it was—I do not know. We deal with so many people over there. They have whole groups of people that come in at various stages. Who signed it eventually was, I believe, the head of the local office that signed the lease for the space.

That is part of the problem, if you do not mind me suggesting, since you are serving as an oversight body and hoping to respond to future problems, it is very difficult for me to go out and represent you—to lease for you a law office. You know what your requirements are. You may be the best draftsman in the world and can put it down in the clearest and most precise language. But you come to me and tell me as a real estate man to go out and fulfill your desires. There is going to be a gap in communications and a misunderstanding downstream.

Worse than that, if I am now dealing with this Mr. Trietsch over here, and he is removed from you, there is going to be a further gap.

Now, if it is this committee's intent to try to resolve the problems of GSA and leasing, it appears to me that when this Congress, in its wisdom, gives an agency or some subordinate within the agency the right to operate a complete agency, then they ought to have—and to spend money, millions and millions of dollars in contracts and consulting and all sorts of things, I do not know whether it is in the best interest of all parties whether they have to go to a third party who is being reorganized constantly and being changed.

The truth of the matter is if I am dealing with somebody in town who is trying to rent an office from me, invariably all subordinates will handle the details but we will finally sit down and knock out the agreement.

The other problem is the fear of making decisions. We have GSA and any agency, any agency, Treasury or HEW who wants to go out and put in a new door. They have to go through eight checks and balances and then we get somebody from GAO who comes in and counts the number of ceiling tiles and says, wait a minute, there is a foot of ceiling tile missing and you get billed for that and they do not realize that the other foot hangs in the back because they have no experience with real estate——

Mr. MOLINARI. Let me try to shorten this.

Mr. BRESLER. I am sorry. It seems to me somebody could do it better than the way it is being done now.

Mr. MOLINARI. The question I have is: Is there a change in procedures now as opposed to then?

Mr. BRESLER. Yes.

Mr. MOLINARI. Can you give us a brief idea as to what those are?

Mr. BRESLER. Now, you go through about 18 reviews that are interminable, from contracts to the congressional committee, to health and safety and everybody in the near world has to sign off. Getting a decision is nearly impossible, which is costly to the lessor and to the Government.

No. 2, a lease document, an SFO, is no longer boilerplate. It comes out of a computer which is worse boilerplate and in most instances has no bearing to the building and has to be interlineated and each page has to be signed. If we have an SFO, we all agree and sign each page individually and those are the basic——

Mr. MOLINARI. How many copies would you sign?

Mr. BRESLER. Right now?

Mr. MOLINARI. Today.

Mr. BRESLER. I think three or four copies that are signed—it is three or four and now with the advent of Xerox machines in everybody's office, everybody makes copies like crazy. Used to be you had to put these into black or white——

Mr. MOLINARI. You yourself would sign, initial every page?

Mr. BRESLER. Every page is signed.

Mr. MOLINARI. And you would execute a minimum of three copies?

Mr. BRESLER. Unless that is a file copy, which I presume it is, which would conform eight copies and somebody needed another copy. I am talking about the February 19 letter which is different from the one you have with the Government approval on the bottom.

Mr. MOLINARI. Mr. Chairman, I have no further questions.

Mr. LEVITAS. Thank you, Mr. Molinari.

I have just a couple more questions and observations.

I think it might be helpful to you to understand my state of mind as I ask you these questions. Without going into motivations or why certain things occurred or how they came about, and after having heard hours of testimony from various witnesses and read many documents, my belief is that in response to the SFO, the request for space, you entered into these discussions with GSA about the lease of Waterside Mall; that the question of the cafeteria came up during the negotiations and that the agreement incorporated the understanding about providing the cafeteria in accordance with that page 27 as represented by GSA; that the standard SFO was different from that. It was, in fact, the version that you submitted before the Board of Contract Appeals, but because of discussions, negotiations, that provision was modified and that page 27 that was proffered by GSA was, in fact, an embodiment of the understanding that was reached; that subsequently—and I think it is fair to say that you were not really happy with that throughout and that GSA began to get very concerned about it and resulted in that letter of February 28, 1972 by Mr. Shipp.

It progressed from there to the meeting in March and finally the letter from Mr. Roush which seemed to say, go forward, put everything in abeyance, let us get this building opened.

GSA, from that point forward, went to sleep at the switch for whatever reason, they failed to assert their rights and as the Board of Contract Appeals finally held, that the rights of the Government, which they found to have existed, were de facto waived.

Now, that differs from your interpretation. I understand that. But there is a letter here written by your attorney, Mr. Richey, enclosing a document signed by you. The letter from Mr. Richey is dated February 12, 1971. I believe you have a copy of that.

Mr. Shaw from Florida, a member of the committee, is now joining us.

If you could put that in front of you for a moment.

Mr. **Bresler**. Which letter?

Mr. **Levitas**. A letter from Mr. Richey to Mr. Shipp enclosing a document signed by you and entitled "Amendment to Proposal to Lease Space Offering No. 55," et cetera.

Mr. **Bresler**. I do not recall such a letter.

Mr. **Harrison**. I recall it, Mr. Chairman.

Mr. **Levitas**. Mr. Bresler has a copy there.

Mr. **Bresler**. I have it.

Mr. **Levitas**. If you will look on page 4 of the amendment which you signed and direct your attention to the next to last paragraph on the page, it says a cafeteria or cafeterias will be provided in accordance with paragraph 10(a) of schedule B, part 3 of the offer.

Do you see that?

Mr. **Bresler**. Yes.

Mr. **Levitas**. The significance, to me, of that in terms of the scenario that I just went through is that the section 10 or paragraph 19 of GSA's version, in fact, contains a paragraph (a) and a paragraph (b). The version of page 27, paragraph 10, which you submitted to the Board of Contract Appeals, contains no paragraph (a) or (b). It is just one paragraph.

So, I conclude from that that the document to which you make reference in the next to last paragraph on page 4 above related to a paragraph 10 containing subparagraphs (a) and (b).

I was wondering if you had any explanation for that other than the one I have just given?

Mr. **Bresler**. I think there are two additions I can give to it, if you do not mind. If you look at the heading, "special requirements," right before the word "cafeteria" or "cafeterias," if you go to the following page, page 5, the second paragraph down states, and it is underlined on this copy, all special requirements including but not limited to, and it goes on and modifies it, that it will be put in where practicable, pursuant to Government cost, at a cost plus 10 percent overhead and 10 percent representing profit.

I presume when GSA received this, they then, and if I recall correctly there were some additional sessions following the receipt of this or discussion came up with the February 19 letter because it was not so clear at that point—what was the requirement to state it again accepting my offer and then getting in there with the cafeteria and interlineating it with restaurant/food facilities.

So during that period of time I think somebody at GSA said, "Well, maybe we do not want to pay for it as a special requirement, if there is going to be enough space there in food and food facilities," and that is why I believe the letter now comes back amending this to a point stating that here, the first paragraph of the February 19 letter. That would be my rational interpretation of what possibly happened. But I do not know it as a fact. It is just—you have to look at the way things happened back 13 years ago.

Mr. **Levitas**. One of the still unexplained differences even under your explanation is that both Mr. Richey's letter and enclosure of February 12, I think it is, and the version of February 19, make reference specifically to the word "cafeteria" whereas page 27 which you offered makes no reference to a cafeteria.

Mr. **Bresler**. It is all food service.

Mr. **Levitas**. And there was specific reference to a cafeteria both in the February 12 and February 19 letters.

Mr. **Bresler**. As I say, I did not prepare the letter that Mr. Richey sent with—all of these revised figures and space and everything else in here. All I did was concur in what was there and I cannot go any further than that, to the best of my recollection.

Mr. **Levitas**. One last thing. I am going to ask you if you would watch a small film clip we have over here. It is a Washington Channel 7 television news story from December 1978 which discusses this matter. After you have looked at it, I will ask you one or two questions concerning that.

[A brief videotape was played.]

Mr. **Levitas**. The question I have does not relate to all of the structural problems this, that and the other.

There are two questions. One was the matter with respect to this report that you had agreed to build a cafeteria and, second, that you had advance notice about this procurement a year before the lease negotiations and I just felt it was appropriate to respond to both since that has been presented to the subcommittee.

Mr. **Harrison**. Mr. Chairman, before he does, may I make a comment? This has nothing to do with David Schoumacher personally or Barbara Blum personally but as you and I know, very often we have David Schoumachers of the world and Barbara Blum of the world on the witness stand on direct examination and sometimes we get the type of presentation we just saw. Then after cross-examination we find the story is very different.

Mr. **Levitas**. Certainly. We are very well aware of that. It is as much a matter of fairness to Mr. Bresler as anything else not to simply leave before this subcommittee the one-sided presentation that is on that film clip.

Mr. **Harrison**. Mr. Chairman, the true way, and I do not want to characterize—the true way of fairness would be to produce David Schoumacher and Barbara Blum and, believe me, I know how to cross-examine and we would not have a story like that.

Mr. **Levitas**. The only question I am raising has nothing to do with the water coming in or the elevators not operating or the ceilings falling down. Those are matters we have dealt with on other occasions. I am not interested in that.

I was specifically inquiring whether Mr. Bresler had recollection of making those two statements to Mr. Schoumacher.

Mr. Bresler did not make those statements on television. Mr. Schoumacher reported that he made two statements relating, one, to the information about the procurement and the other, relating to the provision of a cafeteria. And I was just wondering if Mr. Bresler chose to make any response to that—to either of those statements.

Mr. **Bresler**. I have no recollection, Mr. Chairman, of talking to Mr. Schoumacher. In fact, I think I avoided speaking to him and told him—I do not know at that time whether we were in court—in before the Board of Contract Appeals and he was quoting from the contract appeals documents or just what he was—I have no idea.

He came up to my office. You saw a picture of my back. I told them I would not appear on camera and I would not talk. Because I have been exposed to the vagaries of the press, having served in public office and you know that you cannot respond. They will clip out those areas that they want to make controversial and leave everything else there.

Mr. **Levitas**. We have all had those experiences.

Mr. **Bresler**. And I have been to the Supreme Court on that and I have been successful in the lower courts. I have refused to talk. I do not know where he got those statements.

Mr. **Levitas**. That was the question. I was not even interested in the rest of it.

Mr. **Bresler**. The picture of me is a still that they pulled out of somewhere.

Mr. **Levitas**. It was the fact that Mr. Schoumacher attributed two of those statements to you and I felt that it was appropriate to find out whether or not you made those statements to him and if there was any other statement you wished to make about that.

Mr. **Bresler**. None sir.

Mr. **Levitas**. I have no further questions.

Does any member of the committee have any further questions? If not, I thank you, Mr. Bresler.

Mr. **Bresler**. I thank you for your courtesy and the cooperation of your staff in presenting us with all of these documents. You have one copy of my document there. If you need more, we have another copy here.

Mr. **Levitas**. Before I excuse you, if either you or Mr. Harrison have any statement you would like to make, you are certainly free to do so.

Mr. **Bresler**. No, I do not think so.

Mr. **Harrison**. Thank you for the opportunity, but we will forego it, Mr. Chairman.

Mr. **Levitas**. Thank you, Mr. Harrison and Mr. Bresler. We appreciate your participation this afternoon and you are excused.

Congressman Shaw of Florida would like to ask one question.

Mr. **Shaw**. Looking at this page 27 and the difference, do you have in your possession, or does your attorney have in his possession, your examination of the original of that lease?

Mr. **Bresler**. That is not attached to the lease. We have presented it——

Mr. **Shaw**. I am talking about the original. None of those are originals. Do you have a signed copy?

Mr. **Bresler**. There are no signed copies.

Mr. **Shaw**. I stand corrected.

Mr. **Bresler**. The SFOs came out but they are not part of the lease. They are just referred to in the lease saying SFO-65 or 67, or whatever number the GSA happens to put to it. Today that SFO is made part of the lease package and each page is signed by GSA and the lessor. In those days, it was not.

Mr. **Levitas**. Thank you, Mr. Bresler and Mr. Harrison.

We would now like to hear from some witnesses from GSA who are here with us today.

Mr. Charles R. Gillum, Deputy Inspector General, General Services Administration; Mr. James Conyngham, Director, Real Property Audits Division, Office of the Inspector General; Mr. John Sobota, Program Director, Office of Audits; Mr. Dennis Trietsch, attorney, Office of Counsel to the Inspector General; and Mr. Lawrence Dempsey, Assistant Inspector General for Investigations.

Gentlemen, do you solemnly swear the testimony you are about to give before the subcommittee today will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. **Gillum**. I do.

Mr. **Conyngham**. I do.

Mr. **Sobota**. I do.

Mr. **Dempsey**. I do.

Mr. **Levitas**. During our earlier hearings on the "missing cafeteria," we heard testimony that important lease documents were missing from GSA's official files. That lease agreements were poorly worded and contained ambiguous requirements. There was testimony about the lack of aggressiveness on the part of GSA officials in pursuing rights to which the Federal Government was contractually entitled. Other major problems surfaced as a result of those hearings, thus indicating to me that there was a strong possibility that the lost cafeteria was only a single instance of a much greater problem existing within the GSA leased-space program. Following those hearings, I personally contacted the GSA Inspector General to determine what procedures and safeguards GSA officials had put into place to avoid a recurrence of such a flagrant and unnecessary loss to the Federal taxpayer. On December 14, 1982, Mr. Sickon, GSA's Inspector General, appeared before the subcommittee and briefed the members on the progress of GSA in the establishment of a more effective and efficient leasing program through the efforts of the newly established GSA task force, as well as other efforts initiated by GSA officials. Mr. Sickon told us of:

One, the development of an easy-to-read simplified handbook for leasing specialists;

Two, a standardized lease file to make leasing files uniform in GSA regions;

Three, improved training of leasing specialists within GSA; and

Four, the leasing policy change requiring that all leases over $200,000 be made subject to review by GSA's Office of Inspector General.

Today Mr. Sickon is unable to be with us for an update of the progress of those safeguards to the GSA leasing program. However, we are fortunate to have this panel with us today to address that issue, and we also have Mr. Dennis Trietsch, an attorney for the GSA's Inspector General who has been with us during the entire series of hearings on the missing cafeteria.

I believe several of you were with us at the December 14, 1982 hearing in the last Congress.

At this time, I would ask if you have a prepared statement which you would like to share with us.

TESTIMONY OF PANEL CONSISTING OF CHARLES R. GILLUM, DEPUTY INSPECTOR GENERAL, GENERAL SERVICES ADMINISTRATION; JAMES CONYNGHAM, DIRECTOR, REAL PROPERTY AUDITS DIVISION, OFFICE OF THE INSPECTOR GENERAL; JOHN SOBOTA, PROGRAM DIRECTOR, OFFICE OF THE INSPECTOR GENERAL; DENNIS TRIETSCH, ATTORNEY, OFFICE OF COUNSEL TO THE INSPECTOR GENERAL; AND LAWRENCE DEMPSEY, ATTORNEY, ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS

Mr. **Gillum**. I am pleased to be here today representing the GSA Inspector General, Joseph A. Sickon, in order to provide you with some further comments on the Waterside Mall cafeteria issue. Accompanying me today are James Conyngham and John Sobota of the Office of Audits, and Dennis Trietsch, an attorney with our office.

During previous hearings before this subcommittee, we outlined for you the detailed examination conducted by our office concerning the reasons for the waiver of the right to a cafeteria at EPA Headquarters in Waterside Mall. As you will recall, we identified several problems which led to this waiver. We also examined and reported on procedures now in use by the Public Buildings Service which should prevent any future loss to the Government of a valuable property right such as occurred here. We are again prepared today to address any specific questions or concerns which you may have related to these issues.

As you know, during the last hearings before this subcommittee, which took place on December 14, 1982, the Inspector General outlined for you in his statement the audit and inspection activities which have been undertaken by our office in order to identify systemic problems facing the GSA leasing program. Our January 28, 1983 letter to you, in part, provided answers to two questions posed by you, Mr. Chairman, and Mr. Molinari, during the December 14 hearings, both of which related to GSA leasing practices. One of these two questions concerned a status report on the implementation by the Public Buildings Service of the audit recommendations contained in our March 31, 1982 audit report entitled, "An Approach to Improving GSA's Leasing Program." We hope that the summary provided along with our January 28 letter assisted you in gaining a better understanding of the status of this effort.

I am now prepared to address any specific questions you may have at this time related to any of these matters.

Mr. **Levitas**. Thank you very much.

First of all, just as an overview, what is the status of those changes which were proposed to be implemented by GSA, such as the establishment of the Office of Acquisiton Policy, Contract Officers in Service, Program Warranty Contract Officers, Expanded Contracting Officer Training program, establishment of a Contract Assurance Section, and the Public Buildings Service?

Mr. **Gillum**. It is my understanding all of those are on course. Perhaps Mr. Conyngham could add to that.

Mr. **Conyngham**. They are all in place today, Mr. Chairman.

Mr. LEVITAS. Does the Contract Assurance Section have responsibility for making sure that you get what you bargain for? Is that its responsibility?

Mr. CONYNGHAM. Yes, sir.

Mr. LEVITAS. You see, in this case what happened, among other things, is that the GSA believed it made a contractual arrangement for a cafeteria. They got into this dispute with Mr. Bresler and his company and then, around May 1972, said they were going to look into it and find out what to do, and then nothing happened for 4 years.

Does this Contract Assurance Section deal with making certain that nothing like that can fall between the cracks again?

Mr. CONYNGHAM. The Office of Contracts reviews the leases over $500,000. There is a dollar threshold and that group has responsibility for reviewing the lease prior to its award.

Now, we also have in place a review program whereby these leases are subject to review by the Office of the Inspector General before they are awarded. That is any lease over $200,000 would be subject to review by our office.

Mr. LEVITAS. What I am getting at, Mr. Conyngham, is not what happens before the lease is entered into but to have a punch list or checkoff to make certain that what the lessor agreed to do, he in fact will do, such as providing a cafeteria, if that is what he agreed to do.

Mr. CONYNGHAM. Mr. Sobota might be able to speak to this a little better than I, but I believe their procedures do require a type of review whereby, when there are changes made to a solicitation, the next level of supervision reviews that change. Someone other than the realty specialist who made the change reviews it on a post-review basis. So it is double checked.

Mr. SOBOTA. Mr. Chairman, you are referring to a lease enforcement type of procedure. The process described by Mr. Conyngham takes place before a lease is awarded. The lease enforcement takes place afterward. We have not looked at that area. It is in our audit plans which we advised you of in December. We are generally familiar with how it works. It is delegated to various levels to local leasing specialists. How well that program is working at this time, we cannot say.

Mr. LEVITAS. It is very critical, of course, because it goes to the heart of what we have been talking about for a number of months now.

I am wondering if someone could submit for the record from the Inspector General's Office a description and evaluation of how that lease enforcement or contract enforcement program is in fact working.

Would you do that, Mr. Gillum?

Mr. GILLUM. Yes, sir.

[Subsequently the following information was furnished to the subcommittee:]

Services Administration
Buildings Service
Washington, DC 20405

Date : JUN 20 1983

Re to A : Office of Space Management - PR

Subject : Congressional Request on Certain Leasing Matters

To : Inspector General - J

This is in response to your memorandum of May 27, 1983, requesting PBS program information in the areas of lease enforcement procedures and training of realty staffs.

Lease Enforcement Procedures:

(1) The administration procedures of our leasing program are described in general in our leasing handbook, Acquisition of Leasehold Interests in Real Property, PBS P 1600.1A. Chapter 6, paragraph 2a describes lease administration as:

> "a continuous positive action by the contracting officer to insure the performance and coordination of actions necessary after consummation of a lease (1) to interpret and enforce the lease, (2) to effect renewal or extension of the lease (3) to negotiate and document changes thereto, (4) to authorize rental payments and adjust rental for operating cost and tax escalation, (5) to terminate the lease, (6) to settle claims for restoration, and (7) all other related actions necessary to ensure that the Government receives its full benefits provided by the lease."

The performance and coordination of actions in accordance with lease terms involving day-to-day building maintenance and operating matters are accomplished by the field representatives of Buildings Management.

(2) A copy of the leasing handbook is attached.

(3) The contracting officer is responsible for lease administration and he is the official designated to make findings and determinations to enter into a lease, and to administer leases. The contracting officer will exercise technical direction over PBS Area Managers in their responsibilities.

Chapter 6, paragraph 4a(1) states:

> "The first responsibility of the contracting officer is to ensure that the space is delivered ready for occupancy in accordance with the lease provisions. It is the contracting officer's continuing responsibility to ensure that the Government gets what it pays for under the lease. Failure of the lessor to perform under the terms of a lease is not necessarily justification for termination, but prompt action must be taken to correct deficiencies rather than to permit them to accrue until the expiration date of the lease. If the lessor fails to perform, a rental deduction can and must be made consistent with par. 15 of Standard Form 2A. The paragraph establishes a right in the Government to secure either services and utilities or to perform maintenance and repairs and to deduct the cost from rental payments in the event the lessor fails to provide these as required under the lease. The right should be exercised judiciously; however, by not enforcing the provisions of par. 15 when necessary, it is tantamount to giving up a right and benefits without consideration. The Regional Counsel will concur on all cases of withholding of rental for nonperformance."

The chapter goes on to explain the requirements of inspection prior to occupancy and the notice requirements and procedures used to obtain corrections of deficiencies during occupancy.

(4) As to the question of assurances that lease administration procedures are implemented, it should be pointed out that the predominance of lease administration work in the inventory of GSA's leases involves negotiated contract amendments for alterations, increases or decreases of square footage, change of ownership or payee, escalations, or changes in terms. These administrative procedures are documented in the lease files and reviewed by the Contracting Officer. In addition to these internal procedures, there are external regional and Central Office contract clearance requirements when certain dollar thresholds are exceeded.

Regional surveys are conducted by the Office of Space Management at which time the contracting and administration procedures of a regional office are reviewed by a Central Office team. These surveys are concluded with a review session with regional officials and followed up by a written report.

When lease enforcement problems arise, close cooperation between Buildings Managers and Contracting Officers is the best assurance that small problems do not escalate needlessly and that time is not lost in taking corrective actions.

(5) The Office of Space Management on a continuous basis receives input from the regional offices with regard to their implementation of the leasing program. These suggestions, in addition to recommendations of the GSA IG, GAO, Acquisition Policy and other GSA offices are evaluated and implemented where appropriate.

It has been the experience of the Office of Space Management that the vast majority of leases in the inventory are routinely administered without incident. Of those cases where lease administration problems do occur, it is usually found that existing policy and procedures were not properly implemented.

Most recently a Contract/Lease Administration Task Force has been formed as a result of the Administrator's conference in May. This group, including representatives of PBS Space Management, Buildings Management, and Construction Management, the IG, Contract Clearance, and regional OPCO, is addressing the various issues of lease administration. The preliminary reports from the several subcommittees should be available soon.

Training Program for Realty Specialists and Trainees

(1) The training programs in the regions consist mostly of "on-the-job" instruction. To complement the leasing handbook, the Office of Space Management has produced a "how-to" guide to acquiring space entitled, "Acquisition of Leased Space." This guide shows the step-by-step leasing process complete with examples.

This guide will be supplemented with a similar second volume specifically dedicated to the administration of leased space which is targeted for completion this September.

(2) Formal training courses in the real estate area are available at local colleges and through the Office of Personnel Management. A training program for contracting officers and realty specialists in the Acquisition Branches has been established and implemented. A course in the analysis of space requests for Assignment and Utilization Branch specialists has also been established and is now being taught by Central Office personnel.

(3) Progress in training Space Management personnel through OPM or at local colleges has been hampered by funding restrictions in Budget Activity 71. The need for additional training is valid and our plans will include training increases.

Richard O Haase

RICHARD O. HAASE
Commissioner

Enclosure

MAY 24, 1983

WITNESSES: CHARLES BRESLER---------------TOWN CENTER MANAGEMENT
ACCOMPANIED BY: MARION HARRISON (Attorney at law)

DENNIS TRIETSCH---------------GSA
CHUCK GILLUM------------------GSA
JAMES CONYNGHAM---------------GSA
JOHN SOBOTA-------------------GSA
LARRY DEMPSEY-----------------GSA

INSERTS INTO THE RECORD:

P-34 LETTER OF FEBRUARY 7, 1972 FROM TOWN CENTER TO GSA REGARDING THE EATING FACILITIES AT WATERSIDE MALL AS REQUIRED BY THE GSA SOLICITATION FOR OFFERS NO. 55.

P-110 A JUNE 20, 1983 RESPONSE FROM GSA'S INSPECTOR GENERAL TO A SUBCOMMITTEE REQUEST FOR A DESCRIPTION AND EVALUATION OF HOW THE GSA LEASE ENFORCEMENT OR CONTRACT ENFORCEMENT PROGRAM IS WORKING.

COPIES OF LETTERS AND RESPONSE ATTACHED.

February 7, 1972

United States of America
General Services Administration
Public Buildings Service
Washington, D. C. 20405

ATTN: Mr. Arthur O. Barton, Acting Chief

Dear Mr. Barton:

This will respond to your letter of February 4, 1972 regarding the eating facilities at the Waterside Mall.

The GSA letter of acceptance for the Waterside Mall stated, dated February 19, 1971, as follows;

> "(2) A cafeteria will be placed in operation on a phased basis, concurrently with the delivery of the Waterside Mall West Office space. This cafeteria operation will be expanded as additional space is delivered so as to provide adequate food service for the number of personnel occupying the space. The level of service which will be considered adequate shall be determined by consultation between the Government and the lessor."

Based on current EPA occupancy and the requirements of the solicitation it appears that the present eating facilities in the center meet the necessary standards of the solicitation. However, we are equally concerned that the additional leased food facilities will be ready concurrent with your occupancy of the tower.

We have instructed the leasing agent to procure from the tenants, the information you seek and we will forward said information to you upon its receipt.

Sincerely,

Charles S. Bresler

Mr. Levitas. Has the revision of the easy-to-read handbook been put into use in GSA offices?

Mr. Gillum. It is our understanding that it has been.

Mr. Levitas. Has it been put into use at this time?

Mr. Gillum. Yes, sir.

Mr. Levitas. A standardized lease file was being developed to assure leasing files would be uniform in each GSA region and no more lease documents would end up missing.

What is the status of that program change?

Mr. Gillum. It is our understanding it is also in place.

Mr. Levitas. In this situation, no one could even find the lease documents.

I know it is hard to believe, coming in at this point, but not only could they not find the documents, but they were missing pages and no one initialed pages of the lease before it was filed away. But this is what this revision is to get at, is that right, Mr. Gillum?

Mr. Gillum. Yes, sir.

Mr. Levitas. And that is in place?

Mr. Gillum. Yes, sir.

Mr. Levitas. Is the realty training specialist program in operation?

Mr. Gillum. We do not believe that has moved forward as quickly.

Mr. Levitas. What is the status of it?

Mr. Gillum. It is still in the preliminary stages.

Mr. Levitas. Would you give me a report of the status of that program and what your projections are for its implementation, because, as we follow up on this, we are going to be dealing with the Administrator to see that these things are done, and I need to know where they stand at this point in light of what we have been hearing during this testimony.

That should also include a description of what this training program is.

Are the leasing actions continuing to be reviewed by the Regional Contract Clearing Officers to assure all required lease documents are in the files?

Mr. Gillum. I believe that is true. We also have our preadvisory review which we have instituted covering all leases over $200,000.

Mr. Levitas. Let me simply conclude my part by saying, as I noted at the outset, we are looking at a $1 billion a year program over a 4-year period. That is more than the jobs bill that Congress voted on. We are talking about a major program. In this instance, we have seen a direct loss to the taxpayers, and the procedures that should have been in place to avoid that were not.

To me it has a very high priority on the subject of waste, fraud and abuse which is the responsibility of the Inspector General to deal with.

I would hope Mr. Sickon would treat very seriously the concerns that we have about the proper role of GSA and particularly the Inspector General to see that this type of waste or abuse cannot recur.

I will be looking forward to that response and will hold the record open in order to make that response part of the record as well.

Mr. Shaw?

Mr. **SHAW**. Thank you, Mr. Chairman.

In response to your comment a moment ago, this being my first hearing on this particular subject, I thought there was a major part of the discussion I did not understand, but it has now come to me, I do understand. It is just rather incredible the way it was being handled.

Let me ask you one question which came to mind with regard to the control on the particular leases.

Are the agencies being housed in the leased premises supplied with a copy of the lease?

Mr. **CONYNGHAM**. I do not think so. They generally are not.

Mr. **SHAW**. Would that not be generally useful so they could see what their guidelines are? Perhaps that would give us a second check on the auditing of the leases to see if everything is being supplied. There is nothing more vicious than a tenant looking over his lease, and perhaps we should put some teeth in there to see if they are getting what they are supposed to be getting.

Is there any other place we could look for this solicitation 55? I am somewhat curious about how a completely different page got in there. Where would such a document be other than the place where we have gotten our copies from?

Mr. **TRIETSCH**. When we originally did the examination back in 1980, I reviewed, among other things, a 1975 or 1976 investigation report prepared by the GSA Office of Investigations, and I also looked at the hearing record of the Board of Contract Appeals. The fact of the matter is they were not able to determine in many instances where the original copies of documents were or where actual documents were located, not only originals. There were simply no photocopies of certain documents that may have been referenced in other documents. So the bottom line was that there was a very haphazard system of filing away materials.

We tried to collect from the various offices within the Public Buildings Service as many documents as we could get our hands on pertaining to the Waterside Mall. We felt we had located all available documents. Other documents had been destroyed, misplaced or lost.

The issue that became the subject of a great deal of controversy was the differing version of page 27 of solicitation No. 55, which has yet to be satisfactorily or conclusively explained. The issue was the lessor's version versus the Government's version. The Government said we have a version that specifies a cafeteria. The lessor said that he had a version simply specifying food facilities. There was no question but that they had differing versions, and we had photocopies of those supplied for the record before the Board of Contract Appeals.

The only issue was how did that come to pass and, frankly, there is no real satisfactory explanation of how that came to pass.

Mr. Bresler obviously indicated today it came to pass that the Government, not he as lessor, amalgamated the differing versions. That is a position the Government took in the hearings before the Board of Contract Appeals. In fact, the administrative judge concluded that the lessor, or someone on his behalf, had undoubtedly amalgamated differing versions of the solicitation. The fact is there is no definitive conclusion.

Mr. **Shaw**. I understand now you do go through a process of initialing each page and signing these types of documents.

Mr. **Trietsch**. If my recollection serves me correctly, the directives are all the result of this particular incident.

Mr. **Shaw**. Have you done a comparison of typewriters involved and the typing involved?

Mr. **Trietsch**. That was reviewed, and I believe there are different typewriters involved. This is one of the things the investigators looked at in 1975. I would have to refresh my recollection on the report.

Mr. **Shaw**. But different machines were used? I have an untrained eye and it looks to me like there are differences.

Thank you, Mr. Chairman.

Mr. **Levitas**. Mr. Sundquist.

Mr. **Sundquist**. In your investigations, was this an exception, this kind of thing, or were all the records screwed up in other cases?

Mr. **Trietsch**. This was the only one that I looked at, but my feel for it is that it is generally an exception. There have been other instances where records have been misplaced or not properly filed.

There was some testimony, I believe, over 2 years ago before this subcommittee by Mr. Al Coleman, from our Office of Investigations. Mr. Coleman at that time indicated that during the course of his investigations he sometimes found that records were missing. Later he clarified that to indicate that during the course of criminal investigations, documents that he was attempting to locate were sometimes not available, not specifically with respect to lease files, and he did not have any real opinion with respect to lease files.

So I would have to say that, regarding lease files, this is probably an exception. One would hope it is an exception.

Mr. **Sundquist**. Who was the GSA negotiator on this, and was he asked, and who worked on it? Was that person asked his recollection of that investigation?

Mr. **Trietsch**. Yes. I don't recall the negotiator's name.

Mr. **Sundquist**. It is not important who it was, but what was his opinion?

Mr. **Trietsch**. My recollection was the negotiator took the position that, indeed, a cafeteria was discussed and it was agreed upon.

Mr. **Sundquist**. When was this lease up for renewal?

Mr. **Trietsch**. The lease runs until 1991. It is a 20-year lease. So the Government is a little over halfway through the lease right now.

Mr. **Sundquist**. There were no clauses in there that the Government could get out of that lease if it wanted to?

Mr. **Trietsch**. I do not recall. I think there is probably a standard clause in there which would permit the Government to do that if it chose to do so.

I might add, incidentally, and I would have to check with the Public Buildings Service, but the price per square foot was a little over $5, and my understanding is that that is currently the price.

Mr. SUNDQUIST. If that is currently the price, you would not want to get out of it.

Mr. LEVITAS. I have no further questions of you gentlemen.

If you would provide us that letter as soon as possible so we can put it in the record, I would appreciate it.

Let me conclude the hearings today by saying hopefully this concludes the testimony before the subcommittee on the matter of the missing cafeteria.

I am going to ask the staff to review the transcript in preparation for a report to be issued, and unless that review discloses the necessity for any further witnesses testifying before the subcommittee, we can hopefully believe this is an end to hearings of the subcommittee on this matter.

The subcommittee wants to express its appreciation to this panel of witnesses and to all the witnesses who testified today and in the earlier hearings before the subcommittee. The testimony clearly reflects that this particular lease was fraught with poor records and poor management by GSA from the beginning to end; from negotiating and memorializing of the negotiations, to the contracting, to execution, to recordkeeping on the part of GSA officials who negotiated the lease and with respect to those who had the responsibility for seeing that what the lease provided was in fact furnished to the taxpayers and, in this instance, that did not occur.

The Government's rights under the original lease were not fully protected, and it is really unconscionable that in this instance literally three-quarters of a million dollars goes down the tube. It is hopeful that this is an isolated example, but normally it has been my experience when you find one cockroach at home, you have a whole bunch of them. It seems to me that we, if nothing else, learned an expensive lesson for the future.

I hope that Mr. Sickon and the Office of Inspector General will follow through diligently on the issues raised with them and report back to us their findings. We will review your findings and recommendations to determine what further action may have to be taken by legislation in connection with this type of situation.

Mr. Trietsch, I want to express special appreciation to you for your diligence in working on this matter over, I guess, years now.

Mr. TRIETSCH. Three years.

Mr. LEVITAS. I think perhaps not in this file of Agatha Christie, but, nevertheless, in a given way we may have finally solved the problem of what happened to the missing cafeteria.

With that, the subcommittee will stand adjourned.

[Whereupon, at 2:42 p.m., the subcommittee adjourned, subject to the call of the Chair.]

○